

AMENDING TITLE 38, UNITED STATES CODE, TO IMPROVE THE SUPER-  
VISION OF FIDUCIARIES OF VETERANS UNDER THE LAWS ADMINIS-  
TERED BY THE SECRETARY OF VETERANS AFFAIRS, AND FOR OTHER  
PURPOSES

SEPTEMBER 19, 2012.—Committed to the Committee of the Whole House on the  
State of the Union and ordered to be printed

Mr. MILLER of Florida, from the Committee on Veterans' Affairs,  
submitted the following

R E P O R T

[To accompany H.R. 5948]

[Including cost estimate of the Congressional Budget Office]

The Committee on Veterans' Affairs, to whom was referred the  
bill (H.R. 5948) to amend title 38, United States Code, to improve  
the supervision of fiduciaries of veterans under the laws adminis-  
tered by the Secretary of Veterans Affairs, and for other purposes,  
having considered the same, report favorably thereon with an  
amendment and recommend that the bill as amended do pass.

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## AMENDMENT

The amendment is as follows:

Strike all after the enacting clause and insert the following:

## SECTION 1. TABLE OF CONTENTS.

The table of contents for this Act is as follows:

- Sec. 1. Table of Contents.
- Sec. 2. Improvement of fiduciaries for veterans.
- Sec. 3. Establishment of Place of Remembrance at Arlington National Cemetery.
- Sec. 4. Furnishing caskets and urns for deceased veterans with no known next of kin.
- Sec. 5. Improved communication between Department of Veterans Affairs and medical examiners and funeral directors.
- Sec. 6. Report on compliance of Department of Veterans Affairs with industry standards for caskets and urns.
- Sec. 7. Exclusion of persons convicted of committing certain sex offenses from interment or memorialization in national cemeteries, Arlington National Cemetery, and certain State veterans' cemeteries and from receiving certain funeral honors.
- Sec. 8. Veterans freedom of conscience protection.
- Sec. 9. Authority for the performance of medical disability examinations by contract physicians.
- Sec. 10. Provision of access to case-tracking information.
- Sec. 11. Notification by the Secretary of Veterans Affairs of individuals whose sensitive personal information is involved in a data breach.
- Sec. 12. Limitation on bonuses for Department of Veterans Affairs employees who violate Federal civil laws or regulations.
- Sec. 13. Limitation on awards and bonuses to employees of the Department of Veterans Affairs.
- Sec. 14. Sense of Congress on Patriot Guard Riders.
- Sec. 15. Sense of Congress honoring Korean War veterans.

## SEC. 2. IMPROVEMENT OF FIDUCIARIES FOR VETERANS.

(a) APPOINTMENT AND SUPERVISION.—

(1) Section 5502 of title 38, United States Code, is amended to read as follows:

**“§ 5502. Appointment of fiduciaries**

“(a) APPOINTMENT.—(1) Where it appears to the Secretary that the interest of the beneficiary would be served thereby, payment of benefits under any law administered by the Secretary may be made directly to the beneficiary or to a relative or some other fiduciary for the use and benefit of the beneficiary, regardless of any legal disability on the part of the beneficiary.

“(2) When in the opinion of the Secretary, a temporary fiduciary is needed in order to protect the benefits provided to the beneficiary under any law administered by the Secretary while a determination of incompetency is being made or appealed or a fiduciary is appealing a determination of misuse, the Secretary may appoint one or more temporary fiduciaries for a period not to exceed 120 days. If a final decision has not been made within 120 days, the Secretary may not continue the appointment of the fiduciary without obtaining a court order for appointment of a guardian, conservator, or other fiduciary under the authority provided in section 5502(b) of this title.

“(b) APPEALS.—(1) If the Secretary determines a beneficiary to be mentally incompetent for purposes of appointing a fiduciary under this chapter, the Secretary shall provide such beneficiary with a written statement detailing the reasons for such determination.

“(2) A beneficiary whom the Secretary has determined to be mentally incompetent for purposes of appointing a fiduciary under this chapter may appeal such determination.

“(c) MODIFICATION.—(1) A beneficiary for whom the Secretary appoints a fiduciary under this chapter may, at any time, request the Secretary to—

“(A) remove the fiduciary so appointed; and

“(B) have a new fiduciary appointed.

“(2) The Secretary shall comply with a request under paragraph (1) unless the Secretary determines that the request is not made in good faith.

“(3) The Secretary shall ensure that any removal or new appointment of a fiduciary under paragraph (1) does not delay or interrupt the beneficiary's receipt of benefits administered by the Secretary.

“(d) INDEPENDENCE.—A fiduciary appointed by the Secretary shall operate independently of the Department to determine the actions that are in the interest of the beneficiary.

“(e) PREDESIGNATION.—A veteran may predesignate a fiduciary by—

“(1) submitting written notice to the Secretary of the predesignated fiduciary;

or

“(2) submitting a form provided by the Secretary for such purpose.

“(f) APPOINTMENT OF NON-PREDESIGNATED FIDUCIARY.—If a beneficiary designates an individual to serve as a fiduciary under subsection (e) and the Secretary appoints an individual not so designated as the fiduciary for such beneficiary, the Secretary shall notify such beneficiary of—

“(1) the reason why such designated individual was not appointed; and

“(2) the ability of the beneficiary to modify the appointed fiduciary under subsection (c).

“(g) PRIORITY OF APPOINTMENT.—In appointing a fiduciary under this chapter, if a beneficiary does not designate a fiduciary pursuant to subsection (e), to the extent possible the Secretary shall appoint a person who is—

“(1) a relative of the beneficiary;

“(2) appointed as guardian of the beneficiary by a court of competent jurisdiction; or

“(3) authorized to act on behalf of the beneficiary under a durable power of attorney.”

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 55 of title 38, United States Code, is amended by striking the item relating to section 5502 and inserting the following:

“5502. Appointment of fiduciaries.”.

(b) SUPERVISION.—

(1) IN GENERAL.—Chapter 55 of title 38, United States Code, is amended by inserting after section 5502, as amended by subsection (a)(1), the following new section:

**“§ 5502A. Supervision of fiduciaries**

“(a) COMMISSION.—(1)(A) In a case in which the Secretary determines that a commission is necessary in order to obtain the services of a fiduciary in the best interests of a beneficiary, the Secretary may authorize a fiduciary appointed by the Secretary to obtain from the monthly benefits provided to the beneficiary a reasonable commission for fiduciary services rendered, but the commission for any month may not exceed the lesser of the following amounts:

“(i) The amount that equals three percent of the monthly monetary benefits under laws administered by the Secretary paid on behalf of the beneficiary to the fiduciary.

“(ii) \$35.

“(B) A commission paid under this paragraph may not be derived from any award to a beneficiary regarding back pay or retroactive benefits payments.

“(C) A commission may not be authorized for a fiduciary who receives any other form of remuneration or payment in connection with rendering fiduciary services for benefits under this title on behalf of the beneficiary.

“(D) In accordance with section 6106 of this title, a commission may not be paid to a fiduciary if the Secretary determines that the fiduciary misused any benefit payments of a beneficiary.

“(E) If the Secretary determines that the fiduciary has misused any benefit or payments of a beneficiary, the Secretary may revoke the fiduciary status of the fiduciary.

“(2) Where, in the opinion of the Secretary, any fiduciary receiving funds on behalf of a Department beneficiary is acting in such a number of cases as to make it impracticable to conserve properly the estates or to supervise the persons of the beneficiaries, the Secretary may refuse to make future payments in such cases as the Secretary may deem proper.

“(b) COURT.—Whenever it appears that any fiduciary, in the opinion of the Secretary, is not properly executing or has not properly executed the duties of the trust of such fiduciary or has collected or paid, or is attempting to collect or pay, fees, commissions, or allowances that are inequitable or in excess of those allowed by law for the duties performed or expenses incurred, or has failed to make such payments as may be necessary for the benefit of the ward or the dependents of the ward, then the Secretary may appear, by the Secretary’s authorized attorney, in the court which has appointed such fiduciary, or in any court having original, concurrent, or appellate jurisdiction over said cause, and make proper presentation of such matters. The Secretary, in the Secretary’s discretion, may suspend payments to any such fiduciary who shall neglect or refuse, after reasonable notice, to render an account to the Secretary from time to time showing the application of such payments for the benefit of such incompetent or minor beneficiary, or who shall neglect or refuse to administer the estate according to law. The Secretary may require the fiduciary, as part of such account, to disclose any additional financial information concerning the beneficiary (except for information that is not available to the fiduciary). The Secretary may appear or intervene by the Secretary’s duly authorized attorney in any court as an interested party in any litigation instituted by the Secretary or otherwise, directly affecting money paid to such fiduciary under this section.

“(c) PAYMENT OF CERTAIN EXPENSES.—Authority is hereby granted for the payment of any court or other expenses incident to any investigation or court pro-

ceeding for the appointment of any fiduciary or other person for the purpose of payment of benefits payable under laws administered by the Secretary or the removal of such fiduciary and appointment of another, and of expenses in connection with the administration of such benefits by such fiduciaries, or in connection with any other court proceeding hereby authorized, when such payment is authorized by the Secretary.

“(d) TEMPORARY PAYMENT OF BENEFITS.—All or any part of any benefits the payment of which is suspended or withheld under this section may, in the discretion of the Secretary, be paid temporarily to the person having custody and control of the incompetent or minor beneficiary, to be used solely for the benefit of such beneficiary, or, in the case of an incompetent veteran, may be apportioned to the dependent or dependents, if any, of such veteran. Any part not so paid and any funds of a mentally incompetent or insane veteran not paid to the chief officer of the institution in which such veteran is a patient nor apportioned to the veteran’s dependent or dependents may be ordered held in the Treasury to the credit of such beneficiary. All funds so held shall be disbursed under the order and in the discretion of the Secretary for the benefit of such beneficiary or the beneficiary’s dependents. Any balance remaining in such fund to the credit of any beneficiary may be paid to the beneficiary if the beneficiary recovers and is found competent, or if a minor, attains majority, or otherwise to the beneficiary’s fiduciary, or, in the event of the beneficiary’s death, to the beneficiary’s personal representative, except as otherwise provided by law; however, payment will not be made to the beneficiary’s personal representative if, under the law of the beneficiary’s last legal residence, the beneficiary’s estate would escheat to the State. In the event of the death of a mentally incompetent or insane veteran, all gratuitous benefits under laws administered by the Secretary deposited before or after August 7, 1959, in the personal funds of patients trust fund on account of such veteran shall not be paid to the personal representative of such veteran, but shall be paid to the following persons living at the time of settlement, and in the order named: The surviving spouse, the children (without regard to age or marital status) in equal parts, and the dependent parents of such veteran, in equal parts. If any balance remains, such balance shall be deposited to the credit of the applicable current appropriation; except that there may be paid only so much of such balance as may be necessary to reimburse a person (other than a political subdivision of the United States) who bore the expenses of last sickness or burial of the veteran for such expenses. No payment shall be made under the two preceding sentences of this subsection unless claim therefor is filed with the Secretary within five years after the death of the veteran, except that, if any person so entitled under said two sentences is under legal disability at the time of death of the veteran, such five-year period of limitation shall run from the termination or removal of the legal disability.

“(e) ESCHATEMENT.—Any funds in the hands of a fiduciary appointed by a State court or the Secretary derived from benefits payable under laws administered by the Secretary, which under the law of the State wherein the beneficiary had last legal residence would escheat to the State, shall escheat to the United States and shall be returned by such fiduciary, or by the personal representative of the deceased beneficiary, less legal expenses of any administration necessary to determine that an escheat is in order, to the Department, and shall be deposited to the credit of the applicable revolving fund, trust fund, or appropriation.”.

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 55 of title 38, United States Code, is amended by inserting after the item relating to section 5502 the following new item:

“5502A. Supervision of fiduciaries.”.

(c) DEFINITION OF FIDUCIARY.—Section 5506 of title 38, United States Code is amended—

(1) by striking “For purposes” and inserting “(a) For purposes”; and

(2) by adding at the end the following new subsection:

“(b)(1) For purposes of subsection (a), the term ‘person’ includes any—

“(A) State or local government agency whose mission is to carry out income maintenance, social service, or health care-related activities;

“(B) any State or local government agency with fiduciary responsibilities; or

“(C) any nonprofit social service agency that the Secretary determines—

“(i) regularly provides services as a fiduciary concurrently to five or more individuals; and

“(ii) is not a creditor of any such individual.

“(2) The Secretary shall maintain a list of State or local agencies and nonprofit social service agencies under paragraph (1) that are qualified to act as a fiduciary under this chapter. In maintaining such list, the Secretary may consult the lists maintained under section 807(h) of the Social Security Act (42 U.S.C. 1007(h)).”.

(d) QUALIFICATIONS.—Section 5507 of title 38, United States Code, is amended to read as follows:

**“§ 5507. Inquiry, investigations, and qualification of fiduciaries**

“(a) INVESTIGATION.—Any certification of a person for payment of benefits of a beneficiary to that person as such beneficiary’s fiduciary under section 5502 of this title shall be made on the basis of—

“(1) an inquiry or investigation by the Secretary of the fitness of that person to serve as fiduciary for that beneficiary to be conducted in advance of such certification and in accordance with subsection (b);

“(2) adequate evidence that certification of that person as fiduciary for that beneficiary is in the interest of such beneficiary (as determined by the Secretary under regulations);

“(3) adequate evidence that the person to serve as fiduciary protects the private information of a beneficiary in accordance with subsection (d)(1); and

“(4) the furnishing of any bond that may be required by the Secretary, in accordance with subsection (f).

“(b) ELEMENTS OF INVESTIGATION.—(1) In conducting an inquiry or investigation of a proposed fiduciary under subsection (a)(1), the Secretary shall conduct—

“(A) a face-to-face interview with the proposed fiduciary by not later than 30 days after the date on which such inquiry or investigation begins; and

“(B) a background check of the proposed fiduciary to—

“(i) in accordance with paragraph (2), determine whether the proposed fiduciary has been convicted of a crime; and

“(ii) determine whether the proposed fiduciary will serve the best interest of the beneficiary, including by conducting a credit check of the proposed fiduciary and checking the records under paragraph (5).

“(2) The Secretary shall request information concerning whether that person has been convicted of any offense under Federal or State law. If that person has been convicted of such an offense, the Secretary may certify the person as a fiduciary only if the Secretary finds that the person is an appropriate person to act as fiduciary for the beneficiary concerned under the circumstances.

“(3) The Secretary shall conduct the background check described in paragraph (1)(B)—

“(A) each time a person is proposed to be a fiduciary, regardless of whether the person is serving or has served as a fiduciary; and

“(B) at no expense to the beneficiary.

“(4) Each proposed fiduciary shall disclose to the Secretary the number of beneficiaries that the fiduciary acts on behalf of.

“(5) The Secretary shall maintain records of any person who has—

“(A) previously served as a fiduciary; and

“(B) had such fiduciary status revoked by the Secretary.

“(6)(A) If a fiduciary appointed by the Secretary is convicted of a crime described in subparagraph (B), the Secretary shall notify the beneficiary of such conviction by not later than 14 days after the date on which the Secretary learns of such conviction.

“(B) A crime described in this subparagraph is a crime—

“(i) for which the fiduciary is convicted while serving as a fiduciary for any person;

“(ii) that is not included in a report submitted by the fiduciary under section 5509(a) of this title; and

“(iii) that the Secretary determines could affect the ability of the fiduciary to act on behalf of the beneficiary.

“(c) INVESTIGATION OF CERTAIN PERSONS.—(1) In the case of a proposed fiduciary described in paragraph (2), the Secretary, in conducting an inquiry or investigation under subsection (a)(1), may carry out such inquiry or investigation on an expedited basis that may include giving priority to conducting such inquiry or investigation. Any such inquiry or investigation carried out on such an expedited basis shall be carried out under regulations prescribed for purposes of this section.

“(2) Paragraph (1) applies with respect to a proposed fiduciary who is—

“(A) the parent (natural, adopted, or stepparent) of a beneficiary who is a minor;

“(B) the spouse or parent of an incompetent beneficiary;

“(C) a person who has been appointed a fiduciary of the beneficiary by a court of competent jurisdiction;

“(D) being appointed to manage an estate where the annual amount of veterans benefits to be managed by the proposed fiduciary does not exceed \$3,600, as adjusted pursuant to section 5312 of this title; or

- “(E) a person who is authorized to act on behalf of the beneficiary under a durable power of attorney.
- “(d) PROTECTION OF PRIVATE INFORMATION.—(1) A fiduciary shall take all reasonable precautions to—
- “(A) protect the private information of a beneficiary, including personally identifiable information; and
  - “(B) securely conducts financial transactions.
- “(2) A fiduciary shall notify the Secretary of any action of the fiduciary that compromises or potentially compromises the private information of a beneficiary.
- “(e) POTENTIAL MISUSE OF FUNDS.—(1) If the Secretary has reason to believe that a fiduciary may be misusing all or part of the benefit of a beneficiary, the Secretary shall—
- “(A) conduct a thorough investigation to determine the veracity of such belief; and
  - “(B) if such veracity is established, transmit to the officials described in paragraph (2) a report of such investigation.
- “(2) The officials described in this paragraph are the following:
- “(A) The Attorney General.
  - “(B) Each head of a Federal department or agency that pays to a fiduciary or other person benefits under any law administered by such department or agency for the use and benefit of a minor, incompetent, or other beneficiary.
- “(f) BOND.—In requiring the furnishing of a bond under subsection (a)(4), the Secretary shall—
- “(1) ensure that any such bond is not paid using any funds of the beneficiary; and
  - “(2) consider—
    - “(A) the care a proposed fiduciary has taken to protect the interests of the beneficiary; and
    - “(B) the capacity of the proposed fiduciary to meet the financial requirements of the bond without sustaining hardship.
- “(g) LIST OF FIDUCIARIES.—Each regional office of the Veterans Benefits Administration shall maintain a list of the following:
- “(1) The name and contact information of each fiduciary, including address, telephone number, and email address.
  - “(2) With respect to each fiduciary described in paragraph (1)—
    - “(A) the date of the most recent background check and credit check performed by the Secretary under this section;
    - “(B) the date that any bond was paid under this section;
    - “(C) the name, address, and telephone number of each beneficiary the fiduciary acts on behalf of; and
    - “(D) the amount that the fiduciary controls with respect to each beneficiary described in subparagraph (C).”.
- (e) ANNUAL RECEIPT OF PAYMENTS.—
- (1) IN GENERAL.—Section 5509 of title 38, United States Code, is amended—
    - (A) in subsection (a)—
      - (i) by striking “may require a fiduciary to file a” and inserting “, subject to regulations prescribed pursuant to subsection (f), shall require a fiduciary to file an annual”; and
      - (ii) by adding at the end the following new sentence: “The Secretary shall transmit such annual report or accounting to the beneficiary and any legal guardian of such beneficiary.”;
    - (B) by adding at the end the following new subsections:
  - “(c) MATTERS INCLUDED.—An annual report or accounting under subsection (a) shall include the following:
    - “(1) For each beneficiary that a fiduciary acts on behalf of—
      - “(A) the amount of the benefits of the beneficiary accrued during the year, the amount spent, and the amount remaining; and
      - “(B) if the fiduciary serves the beneficiary with respect to benefits not administered by the Secretary, an accounting of all sources of benefits or other income the fiduciary oversees for the beneficiary.
    - “(2) A list of events that occurred during the year covered by the report that could affect the ability of the fiduciary to act on behalf of the beneficiary, including—
      - “(A) the fiduciary being convicted of any crime;
      - “(B) the fiduciary declaring bankruptcy; and
      - “(C) any judgments entered against the fiduciary.
  - “(d) RANDOM AUDITS.—The Secretary shall annually conduct random audits of fiduciaries who receive a commission pursuant to subsection 5502A(a)(1) of this title.

“(e) STATUS OF FIDUCIARY.—If a fiduciary includes in the annual report events described in subsection (c)(2), the Secretary may take appropriate action to adjust the status of the fiduciary as the Secretary determines appropriate, including by revoking the fiduciary status of the fiduciary.

“(f) REGULATIONS.—(1) In prescribing regulations to carry out this section, the Secretary, in consultation with the Under Secretary for Benefits and the Under Secretary for Health, shall ensure that the care provided by a fiduciary described in paragraph (2) to a beneficiary is not diminished or otherwise worsened by the fiduciary complying with this section.

“(2) A fiduciary described in this paragraph is a fiduciary who, in addition to acting as a fiduciary for a beneficiary, provides care to the beneficiary pursuant to this title (including such care provided under section 1720G of this title).”; and

(C) by striking the section heading and inserting the following: **“Annual reports and accountings of fiduciaries”**.

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 55 of title 38, United States Code, is amended by striking the item relating to section 5509 and inserting the following new item:

“5509. Annual reports and accountings of fiduciaries.”.

(f) REPAYMENT OF MISUSED BENEFITS.—Section 6107(a)(2)(C) of title 38, United States Code, is amended by inserting before the period the following: “, including by the Secretary not acting in accordance with section 5507 of this title”.

(g) ANNUAL REPORTS.—Section 5510 of title 38, United States Code, is amended by striking “The Secretary shall include in the Annual Benefits Report of the Veterans Benefits Administration or the Secretary’s Annual Performance and Accountability Report” and inserting “Not later than July 1 of each year, the Secretary shall submit to the Committees on Veterans’ Affairs of the House of Representatives and the Senate a separate report containing”.

(h) REPORT.—Not later than one year after the date of the enactment of this Act, the Secretary of Veterans Affairs shall submit to the Committee on Veterans’ Affairs of the Senate and the Committee on Veterans’ of the House of Representatives a comprehensive report on the implementation of the amendments made by this Act, including—

(1) detailed information on the establishment of new policies and procedures pursuant to such amendments and training provided on such policies and procedures; and

(2) a discussion of whether the Secretary should provide fiduciaries with standardized financial software to simplify reporting requirements.

### SEC. 3. ESTABLISHMENT OF PLACE OF REMEMBRANCE AT ARLINGTON NATIONAL CEMETERY.

(a) ESTABLISHMENT AUTHORIZED.—The Secretary of the Army may establish at an appropriate location in Arlington National Cemetery a Place of Remembrance for the interment of cremated fragments of the remains of members of the Armed Forces who died in the circumstances specified in subsection (c) when one of the conditions specified in subsection (d) applies with respect to the remains.

(b) REGULATIONS; DESIGN.—The Secretary of the Army shall—

(1) prescribe such regulations as may be necessary to carry out this section; and

(2) determine how the Place of Remembrance shall be designed.

(c) COVERED CIRCUMSTANCES.—The Secretary of the Army shall suggest that the Place of Remembrance be for the cremated fragments of remains of members of the Armed Forces who died—

(1) in any war or contingency operation prior to or after the date of the enactment of this Act; or

(2) in the line of duty prior to or after the date of the enactment of this Act, consistent with regulations prescribed by the Secretary with respect to burial at Arlington National Cemetery.

(d) REMAINS AUTHORIZED FOR INTERMENT.—Subsection (a) applies to fragments of the remains of a deceased member of the Armed Forces described in such subsection (or fragments reasonable believed to be from the remains of a deceased member of the Armed Forces described in such subsection) that—

(1) are unidentifiable by use of DNA testing or other means because of the condition of the fragments;

(2) are unclaimed after a reasonable period of time;

(3) are identified and authorized for interment in the Place of Remembrance by the person designated under section 1482(c) of title 10, United States Code, to direct disposition of the remains of the member; or

(4) are designated as “No Further Pursuit” remains in cases in which the family of a deceased member has indicated to the Secretary of Army that the

family does not want to be consulted when fragments of the remains of the member are found.

**SEC. 4. FURNISHING CASKETS AND URNS FOR DECEASED VETERANS WITH NO KNOWN NEXT OF KIN.**

(a) **IN GENERAL.**—Section 2306 of title 38, United States Code, is amended—

(1) by redesignating subsections (f) and (g) as subsections (g) and (h), respectively;

(2) by inserting after subsection (e) the following new subsection (f):

“(f) The Secretary shall furnish a casket or urn, of such quality as the Secretary considers appropriate for a dignified burial, for burial in a national cemetery of a deceased veteran described in section 2414(b) of this title.”; and

(3) in subsection (h), as redesignated by paragraph (1), by adding at the end the following new paragraph:

“(4) A casket or urn may not be furnished under subsection (f) for burial of a person described in section 2411(b) of this title.”.

(b) **EFFECTIVE DATE.**—Subsections (f) and (h)(4) of section 2306 of title 38, United States Code, as added by subsection (a), shall take effect on the date of the enactment of this Act and shall apply with respect to deaths occurring on or after such date.

**SEC. 5. IMPROVED COMMUNICATION BETWEEN DEPARTMENT OF VETERANS AFFAIRS AND MEDICAL EXAMINERS AND FUNERAL DIRECTORS.**

(a) **IN GENERAL.**—Chapter 24 of title 38, United States Code, is amended by adding at the end the following new section:

**“§ 2414. Communication between Department of Veterans Affairs and medical examiners and funeral directors**

“(a) **REQUIRED INFORMATION.**—With respect to each deceased veteran described in subsection (b) who is transported to a national cemetery for burial, the Secretary shall ensure that the local medical examiner, funeral director, county service group, or other entity responsible for the body of the deceased veteran before such transportation submits to the Secretary the following information:

“(1) Whether the deceased veteran was cremated.

“(2) The steps taken to ensure that the deceased veteran has no next of kin.

“(b) **DECEASED VETERAN DESCRIBED.**—A deceased veteran described in this subsection is a deceased veteran whom the Secretary determines—

“(1) that there is no next of kin or other person claiming the body of the deceased veteran; and

“(2) does not have sufficient resources to cover burial and funeral expenses.

“(c) **DETERMINATION OF SUFFICIENT RESOURCES.**—If the Secretary is unable to make a reasonable determination of the amount of the resources of a deceased veteran under subsection (b)(2), the Secretary shall deem such resources to be an amount that is not sufficient to cover burial and funeral expenses.”.

(b) **CLERICAL AMENDMENT.**—The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 2413 the following new item:

“2414. Communication between Department of Veterans Affairs and medical examiners and funeral directors.”.

(c) **EFFECTIVE DATE.**—Section 2414 of title 38, United States Code, as added by subsection (a), shall take effect on the date of the enactment of this Act and shall apply with respect to deaths occurring on or after the date that is 180 days after the date of the enactment of this Act.

**SEC. 6. REPORT ON COMPLIANCE OF DEPARTMENT OF VETERANS AFFAIRS WITH INDUSTRY STANDARDS FOR CASKETS AND URNS.**

(a) **IN GENERAL.**—Not later than 180 days after the date of the enactment of this Act, the Secretary of Veterans Affairs shall submit to the Committee on Veterans' Affairs of the Senate and the Committee on Veterans' Affairs of the House of Representatives a report on the compliance of the Department of Veterans Affairs with industry standards for caskets and urns.

(b) **ELEMENTS.**—The report required by subsection (a) shall include the following:

(1) A description of industry standards for caskets and urns.

(2) An assessment of compliance with such standards at National Cemeteries administered by the Department with respect to caskets and urns used for the interment of those eligible for burial at such cemeteries.



**SEC. 7. EXCLUSION OF PERSONS CONVICTED OF COMMITTING CERTAIN SEX OFFENSES FROM INTERMENT OR MEMORIALIZATION IN NATIONAL CEMETERIES, ARLINGTON NATIONAL CEMETERY, AND CERTAIN STATE VETERANS' CEMETERIES AND FROM RECEIVING CERTAIN FUNERAL HONORS.**

(a) **PROHIBITION AGAINST.**—Section 2411(b) of title 38, United States Code, is amended by adding at the end the following new paragraph:

“(4) A person—

“(A) who has been convicted of a Federal or State crime causing the person to be a tier III sex offender for purposes of the Sex Offender Registration and Notification Act (42 U.S.C. 16901 et seq.);

“(B) who, for such crime, is sentenced to a minimum of life imprisonment; and

“(C) whose conviction is final (other than a person whose sentence was commuted by the President or Governor of a State, as the case may be).”.

(b) **CONFORMING AMENDMENTS.**—Section 2411(a)(2) of such title is amended—

(1) by striking “or (b)(2)” each place it appears and inserting “, (b)(2), or (b)(4)”; and

(2) by striking “capital” each place it appears.

(c) **EFFECTIVE DATE.**—The amendments made by this section shall apply with respect to interments and memorializations that occur on or after the date of the enactment of this Act.

**SEC. 8. VETERANS FREEDOM OF CONSCIENCE PROTECTION.**

Section 2404 of title 38, United States Code, is amended by adding at the end the following new subsection:

“(h)(1) With respect to the interment or funeral, memorial service, or ceremony of a deceased individual at a national cemetery, the Secretary shall ensure that—

“(A) the expressed wishes of the next of kin or other agent of the deceased individual are respected and given appropriate deference when evaluating whether the proposed interment or funeral, memorial service, or ceremony affects the safety and security of the national cemetery and visitors to the cemetery;

“(B) to the extent possible, all appropriate public areas of the cemetery, including committal shelters, chapels, and benches, may be used by the family of the deceased individual for contemplation, prayer, mourning, or reflection; and

“(C) during such interment or funeral, memorial service, or ceremony, the family of the deceased individual may display any religious or other symbols chosen by the family.

“(2) Subject to regulations prescribed by the Secretary under paragraph (5), including such regulations ensuring the security of a national cemetery, the Secretary shall provide to any military or volunteer veterans honor guard, including such guards belonging to a veterans service organization or other non-governmental group that provides services to veterans, access to public areas of a national cemetery if such access is requested by the next of kin or other agent of a deceased individual whose interment or funeral, memorial service, or ceremony is being held in such cemetery.

“(3) With respect to the interment or funeral, memorial service, or ceremony of a deceased individual at a national cemetery, the Secretary shall notify the next of kin or other agent of the deceased individual of funeral honors available to the deceased veteran, including such honors provided by any military or volunteer veterans honor guard described in paragraph (2).

“(4) Any person aggrieved by a violation of this subsection or any regulation prescribed pursuant to this subsection may in a civil action in an appropriate Federal court obtain any appropriate relief against the Federal Government with respect to the violation. Standing to assert a claim or defense under this subsection shall be governed by the general rules of standing under Article III of the Constitution.

“(5) The Secretary shall prescribe regulations to carry out this subsection.”.

**SEC. 9. AUTHORITY FOR THE PERFORMANCE OF MEDICAL DISABILITY EXAMINATIONS BY CONTRACT PHYSICIANS.**

Section 704(c) of the Veterans Benefits Act of 2003 (38 U.S.C. 5101 note) is amended by striking “December 31, 2012” and inserting “December 31, 2017”.

**SEC. 10. PROVISION OF ACCESS TO CASE-TRACKING INFORMATION.**

(a) **IN GENERAL.**—Chapter 59 of title 38, United States Code, is amended by adding at the end the following:

**“§ 5906. Provision of access to case-tracking information**

“(a) **IN GENERAL.**—(1) In accordance with subsection (b), the Secretary shall provide a covered employee with access to the case-tracking system to provide a veteran with information regarding the status of a claim submitted by such veteran,

regardless of whether such employee is acting under a power of attorney executed by such veteran.

“(2) In providing a covered employee with access to the case-tracking system under paragraph (1), the Secretary shall ensure—

“(A) that such access—

“(i) is provided in a manner that does not allow such employee to modify the data contained in such system; and

“(ii) does not include access to medical records; and

“(B) that each time a covered employee accesses such system, the employee must certify that such access is for official purposes only.

“(b) **PRIVACY CERTIFICATION COURSE.**—The Secretary may not provide a covered employee with access to the case-tracking system under subsection (a)(1) unless the covered employee has successfully completed a certification course on privacy issues provided by the Secretary.

“(c) **TREATMENT OF DISCLOSURE.**—The access to information by a covered employee pursuant to subsection (a)(1) shall be deemed to be—

“(1) a covered disclosure under section 552a(b) of title 5; and

“(2) a permitted disclosure under regulations promulgated under section 264(c) of the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. 1320d–2 note).

“(d) **DEFINITIONS.**—In this section:

“(1) The term ‘case-tracking system’ means the system of the Department of Veterans Affairs that provides information regarding the status of a claim submitted by a veteran.

“(2) The term ‘covered employee’ means—

“(A) an employee of a Member of Congress who assists the constituents of the Member with issues regarding departments or agencies of the Federal Government; or

“(B) an employee of a State or local governmental agency (including a veterans service officer) who, in the course of carrying out the responsibilities of such employment, assists veterans with claims for any benefit under the laws administered by the Secretary.”.

(b) **CLERICAL AMENDMENT.**—The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

“5906. Provision of access to case-tracking information.”.

**SEC. 11. NOTIFICATION BY THE SECRETARY OF VETERANS AFFAIRS OF INDIVIDUALS WHOSE SENSITIVE PERSONAL INFORMATION IS INVOLVED IN A DATA BREACH.**

(a) **IN GENERAL.**—Subchapter III of chapter 57 of title 38, United States Code is amended by inserting after section 5724 the following new section:

**“§ 5724A. Data breach notification**

“(a) **NOTIFICATION REQUIREMENT.**—Except as provided in subsection (d), in the event of a data breach with respect to sensitive personal information that is processed or maintained by the Secretary, by not later than 10 business days after the date on which the Secretary learns of the data breach, the Secretary shall notify the appropriate committees of Congress and each individual whose sensitive personal information is involved in the data breach is notified of the data breach. If the Secretary determines that providing such notification within 10 business days is not feasible due to circumstances necessary to accurately identify the individuals whose sensitive personal information is involved in the data breach or to prevent further breach or unauthorized disclosure and reasonably restore the integrity of the data system the Secretary shall provide such notification not later than 15 business days after the date on which the Secretary learns of the data breach.

“(b) **CONTRACTS FOR DATA PROCESSING OR MAINTENANCE.**—If the Secretary enters into a contract for the performance of any Department function that requires access to sensitive personal information, the Secretary shall require as a condition of the contract that the contractor agree to provide notification of data breaches in the same manner as required of the Secretary under subsection (a).

“(c) **METHOD AND CONTENT OF NOTIFICATION.**—(1) Notification provided to an individual under subsection (a) shall be provided clearly and conspicuously by one of the following methods:

“(A) Written notification.

“(B) Notification by email or other electronic means, if the Secretary’s primary method of communication with the individual is by email or such other electronic means.

“(2) Regardless of the method by which notification is provided to an individual under paragraph (1), such notification shall include—

“(A) a description of the sensitive personal information involved in the data breach;

“(B) a telephone number that the individual may use, at no cost to the individual, to contact an appropriate employee of the Department to inquire about the data breach or the individual’s sensitive personal information maintained by the Department;

“(C) notice that the individual is entitled to receive, at no cost to such individual, credit protection services under section 5724 of this title;

“(D) the toll-free contact telephone numbers and addresses for the major credit reporting agencies; and

“(E) a toll-free telephone number and website address whereby the individual may obtain information regarding identity theft.

“(d) NOTIFICATION OF GENERAL PUBLIC.—The Secretary, acting through the Office of Public Affairs of the Department, shall notify the general public concerning any data breach involving sensitive personal information by not later than 10 business days after the date on which the Secretary learns of the data breach, unless the Secretary determines that to do so is not feasible due to circumstances necessary to accurately identify the individuals whose sensitive personal information is involved in the data breach or to prevent further breach or unauthorized disclosure and reasonably restore the integrity of the data system, such notification shall be made as soon as possible.

“(e) APPROPRIATE COMMITTEES OF CONGRESS.—In this section, the term ‘appropriate committees of Congress’ means the Committee on Veterans Affairs’ of the House of Representatives and the Committee on Veterans’ Affairs of the Senate.”.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 5724 the following new item:

“5724A. Data breach notification.”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to a data breach occurring on or after the date that is 90 days after the date of the enactment of this Act.

#### **SEC. 12. LIMITATION ON BONUSES FOR DEPARTMENT OF VETERANS AFFAIRS EMPLOYEES WHO VIOLATE FEDERAL CIVIL LAWS OR REGULATIONS.**

(a) IN GENERAL.—Chapter 7 of title 38, United States Code, is amended by adding at the end the following new section:

##### **“§ 713. Limitation on bonuses**

“(a) IN GENERAL.—(1) The Secretary shall ensure that no employee of the Department who, during any year, knowingly violates any law, regulation, or policy described in paragraph (2) receives a bonus for or during that year.

“(2) A law, regulation, or policy described in this paragraph is any of the following:

“(A) A Federal civil law or Federal regulation, including such civil laws or regulations covered under the Federal Acquisition Regulation and the Veterans Affairs Acquisition Regulation.

“(B) An internal policy of the Department.

“(b) CERTIFICATION.—The Secretary shall annually certify to Congress that each bonus awarded by the Secretary during the previous year was awarded in accordance with subsection (a)(1).

“(c) BONUS DEFINED.—For purposes of this section, the term ‘bonus’ includes—

“(1) a retention incentive;

“(2) a retention incentive payment;

“(3) a retention incentive award; and

“(4) any other incentive requiring approval from the Central Office Human Resource Service, the Chief Business Office Workforce Management, or the Corporate Senior Executive Management Office.”.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

“713. Limitation on bonuses.”.

#### **SEC. 13. LIMITATION ON AWARDS AND BONUSES TO EMPLOYEES OF THE DEPARTMENT OF VETERANS AFFAIRS.**

For each of fiscal years 2013 through 2017, the Secretary of Veterans Affairs may not pay more than \$357,613,229 in awards or bonuses under chapter 45 or 53 of title 5, United States Code, or any other awards or bonuses authorized under such title.

#### **SEC. 14. SENSE OF CONGRESS ON PATRIOT GUARD RIDERS.**

(a) FINDINGS.—Congress finds the following:

(1) The Patriot Guard Riders were founded in 2005 in Mulvane, Kansas, with a mission to show sincere respect for fallen members of the Armed Forces by attending their funeral services as invited guests of the member's family.

(2) The Patriot Guard Riders have more than 220,000 members nationwide from all walks of life.

(3) The Patriot Guard Riders shield the mourning family and friends from interruptions created by any protestor or group of protestors.

(4) The Patriot Guard Riders engage only in respectful acts in honor of a fallen member of the Armed Forces.

(5) The members of the Patriot Guard Riders willingly give their time, energy, and money to respect the memory of fallen members of the Armed Forces.

(6) The men and women of the Armed Forces who fight to preserve freedom deserve the utmost respect and support of the American people.

(7) The Patriot Guard Riders provide a unique service that honors fallen members of the Armed Forces and their families.

(b) SENSE OF CONGRESS.—Congress—

(1) commends the Patriot Guard Riders and all of the other volunteers involved in shielding the mourning family and friends of a fallen member of the Armed Forces from interruptions created by any protestor or group of protestors; and

(2) recognizes the sacrifices that veterans, members of the Armed Forces, and their families have made, and continue to make, on behalf of the United States.

#### SEC. 15. SENSE OF CONGRESS HONORING KOREAN WAR VETERANS.

(a) FINDINGS.—Congress finds the following:

(1) On June 25, 1950, Communist North Korea invaded the Republic of Korea with approximately 135,000 troops to initiate the Korean War.

(2) Nearly 1,800,000 members of the Armed Forces of the United States served along with the forces of the Republic of Korea and 20 other Allied nations under the United Nations Command to defend freedom and democracy in the Korean Peninsula.

(3) The United States suffered 36,574 dead and 103,284 wounded during the Korean War in some of the most horrific conditions in the history of warfare.

(4) Almost 60 years have passed since the signing of the cease-fire agreement at Panmunjom on July 27, 1953, and the Korean peninsula still technically remains in a state of war.

(5) The Korean War has become a “Forgotten War” for many Americans.

(6) Many of the members of the Armed Forces who fought in the Korean War returned home without the fanfare that greeted the heroes of World Wars I and II.

(7) Korean War veterans deserve to be recognized by all Americans for their honorable service during the Korean War in defense of democracy and freedom.

(8) The tide of communism on the Korean Peninsula was halted, liberty triumphed over tyranny, and the Republic of Korea has developed into a modern and prosperous democracy because of the selfless sacrifice of the Korean War veterans.

(9) The people of the United States and the Republic of Korea are eternally grateful to the Korean War veterans.

(10) It is important to include the history of the Korean War in the curricula of American schools so that future generations never forget the sacrifices of the Korean War veterans.

(11) The Department of Defense 60th Anniversary of the Korean War Commemoration Committee will implement a national campaign to honor the Korean War veterans, remember those Korean War veterans still counted among the missing in action, and educate the American people concerning the ongoing relevance of the Korean War.

(12) The commemorative campaign will include ceremonies in the United States and the Republic of Korea in recognition of June 25, 1950, and July 27, 1953, and a national media and outreach campaign for Veterans Day 2012 to honor the Korean War veterans.

(b) SENSE OF CONGRESS.—On the occasion of the 60th anniversary of the Korean War, Congress recognizes the importance of the contributions and sacrifices made by veterans of the Korean War.

#### PURPOSE AND SUMMARY

H.R. 5948, the Veterans Fiduciary Reform Act of 2012, was introduced by Oversight and Investigations Subcommittee Chairman Bill Johnson on June 12, 2012. H.R. 5948, as amended, incor-

porates provisions of that bill, as well as provisions of H.R. 5735, introduced by Mr. Stivers of Ohio; H.R. 6073, introduced by Mr. Bilirakis of Florida; H.R. 2355, introduced by Ms. Hartzler of Missouri; H.R. 2720, introduced by Rep. Culberson of Texas; H.R. 5880, introduced by Mr. Runyan of New Jersey; H.R. 5881, introduced by Mr. Runyan of New Jersey; H.R. 3730, introduced by Mr. Donnelly of Indiana; H. R. 4481, introduced by Mr. Roe of Tennessee; H. Res. 669, introduced by Mr. Gingrey of Georgia; and H. Res. 618, introduced by Mr. Rangel of New York. Together, these provisions would improve fiduciary services for veterans; establish a Place of Remembrance at Arlington National Cemetery; bar certain convicted sex offenders from burial in veterans cemeteries; honor a veteran's family's preferences during ceremonies at VA national cemeteries; extend the contract authority for private physicians to conduct medical disability examinations; improve accessibility to case-tracking information on pending claims; modify notification procedures to affected veterans in the event of a data breach at VA; establish penalties for VA employees who violate acquisition regulations; make reasonable modifications to the overall amount of bonuses at VA; and commend Patriot Guard Riders throughout the nation.

## BACKGROUND AND NEED FOR LEGISLATION

### SECTION 2—IMPROVEMENT OF FIDUCIARIES FOR VETERANS

Chapter 55 of Title 38, United States Code, provides authority for the Department of Veterans Affairs (VA) Fiduciary Program, which is intended to help veterans and other VA beneficiaries who are deemed by the Secretary of Veterans Affairs to be mentally incompetent for purposes of handling their financial affairs. In such cases, the Secretary appoints a fiduciary who, by statute, is only authorized to receive and manage benefits administered by the Secretary on behalf of the beneficiary. The fiduciary is responsible for ensuring that a beneficiary's bills are paid on time and that a beneficiary receives money to pay for food, shelter, clothing, medical expenses, and other necessities.

The framework established in chapter 55 allows the Department a great deal of latitude in implementing the Fiduciary Program. During a hearing before the Subcommittee on Oversight and Investigations on February 9, 2012, multiple cases of mismanagement of veterans' funds by VA-appointed fiduciaries and mismanagement of the program overall by VA were discussed.

Among the numerous deficiencies highlighted within the VA Fiduciary Program at that hearing included: fiduciaries embezzling veterans' funds; fiduciaries refusing to pay a veteran's utility bills; fiduciaries taking more than the amount authorized by law as commission for services; convicted felons appointed as fiduciaries; and fiduciaries telling veterans to conserve money by not running air conditioning during summer months.

Prior to the February 2012 hearing on VA's Fiduciary Program, VA's standard form 21-4703, outlining how a fiduciary is to account for a veteran beneficiary's funds, directed that a fiduciary must clear all expenses through VA before disbursing any funds to the veteran. When the problems this requirement created were highlighted during the hearing, VA witnesses acknowledged the

hindrance this restrictive provision placed on fiduciaries attempting to act in the best interest of the veteran, and the provision was subsequently removed after the hearing. However, many of the other faults within the program continue to exist unchecked despite the Subcommittee on Oversight and Investigations repeatedly bringing these issues to VA's attention, not only with the policies and regulations of the program but also in the cases of many individual veterans.

Section 2 of H.R. 5948, as amended, overhauls the VA Fiduciary Program, making many necessary reforms to address problems identified before, during, and after the February 2012 hearing and realigns chapter 55 to a structure more consistent with other amended sections of title 38.

Currently, once a VA beneficiary is appointed a fiduciary, the beneficiary has the right to appeal the decision. The appeals process within VA's Fiduciary Program is difficult, slow, and often results in healthy, capable veterans being unable to remove themselves from the program. Section 2 of H.R. 5948, as amended, would allow a veteran to appeal the finding of incompetence at any time. This provision not only enables a veteran to remain out of the fiduciary program if medical evidence supports such a position, it also allows a veteran who has sufficiently recovered at a later time to return to managing his or her own financial affairs.

Section 2 of H.R. 5948, as amended, would also allow a veteran to request the appointment of a new fiduciary if it is perceived that the current fiduciary is not properly executing the duty of the position or is abusing the veteran's funds in any way. The Secretary may deny the removal of an appointed fiduciary if it is determined that the request was not made in good faith, and shall ensure that the delivery of benefits is not interrupted if a previous fiduciary is removed and a new one appointed.

Section 2 of H.R. 5948, as amended, would also enable a veteran to designate a preferred fiduciary ahead of time, such as a family member or guardian, should the Secretary determine that the appointment of a fiduciary is necessary and in the veteran's best interest. While the Secretary would not be required to appoint the designated fiduciary, the reason for not appointing that fiduciary would have to be presented in writing to the veteran as would a notice of the veteran's right to appeal the appointment. In many cases, a veteran may already have a family member or court-appointed guardian acting as a fiduciary for other benefits, and in cases where the veteran was happy with the fiduciary's performance of those duties, a sensible approach would be to maintain that relationship.

Under certain circumstances, the Secretary may decide that a paid fiduciary is in a veteran's best interest. Section 5502(a)(2) of title 38, United States Code, states that a fiduciary may receive a commission for his or her efforts, but that commission may not exceed four percent of the monetary benefits a beneficiary receives in one year. Investigations, hearings, and media reports identified many problems in the Fiduciary Program arising from paid fiduciaries receiving more than the amount authorized under law, including receiving commissions from retroactive and lump sum payments to veterans. Further, evidence also revealed VA field examiners directing fiduciaries to take income from non-VA benefits as

well, an action explicitly not authorized in law. In many of these instances, the veteran beneficiary still did not receive basic funding for food, clothing, and shelter that should have been administered by the fiduciary.

Following the February 2012 hearing, the Director of VA's Pension and Fiduciary Service issued Fast Letter 12-10 restating the limits on commissions paid to fiduciaries. As this letter simply restated current law and policy, which were frequently violated throughout the nation, the Fast Letter conveyed little expectation of effecting change. In addition, the commission rate paid to VA-appointed fiduciaries is already higher than that paid by the Social Security Administration (SSA) under the Representative Payee Program, the SSA's equivalent to VA's Fiduciary Program. In comparison to the approximately 120,000 beneficiaries under VA's Fiduciary Program, the Social Security Representative Payee Program deals with approximately 7.8 million beneficiaries.

Section 2 of H.R. 5489, as amended, reduces the commission rate paid to fiduciaries, if the Secretary determines that a paid fiduciary is in the best interest of the veteran, to not more than 3% of the veteran's monthly benefits, or \$35 per month, whichever is less. Any desire by VA to increase this rate would require congressional authorization. This commission rate will give VA's Fiduciary Program a similar structure to the SSA's Representative Payee Program and will reduce the profit motive of predatory fiduciaries. The section also clarifies that commission payments are not to be derived from retroactive or lump sum payments; that fiduciaries who are determined to misuse a veteran's benefits may not receive commissions; that fiduciaries found to be misusing funds may have their status as fiduciaries revoked; that the Secretary may seek compensation in a court of law from fiduciaries found to misuse benefits or fiduciaries who fail to adequately account for a veteran's benefits; and that funds remaining with a paid fiduciary after a veteran's passing shall escheat to the federal government. Reducing the financial incentive for a fiduciary to apply to VA's Fiduciary Program provides further assurance that participants are working in the best interest of vulnerable veterans.

During a hearing before the Oversight and Investigations Subcommittee on June 20, 2012, VA opposed reducing the commission, citing the need for paid fiduciaries when no other options were available. VA also opposed the provision that it consider state, local, and non-profit agencies that historically have provided fiduciary services to necessary individuals, citing the maintenance of such a database as burdensome. Section 2 of H.R. 5948, as amended, addresses these concerns by authorizing VA to use the same database used by the Social Security Administration, which serves a vastly larger number of individuals. The inclusion of these agencies provides VA greatly increased options for appointing a fiduciary should the Secretary determine that appointing a preferred fiduciary would not be in the veteran's best interest.

During investigations and hearings, concerns also arose regarding the qualifications of fiduciaries. Documented cases existed of convicted felons serving as fiduciaries as well as fiduciaries with no knowledge of or training regarding their duties to the veteran. Many cases of embezzlement of a veteran's funds could have been prevented with a basic background check of a fiduciary, but VA fre-

quently used its authority to waive the current background check requirement for appointment of a fiduciary, and failed to follow up at a later point in time to determine the suitability of the appointed fiduciary.

Section 2 of H.R. 5948, as amended, improves the qualification process for fiduciaries as well as oversight of fiduciaries already appointed by requiring the Secretary to perform civil and criminal background investigations and a face-to-face interview prior to certifying an individual as a fiduciary; provide evidence that the individual would serve the best interest of the veteran; would protect the veteran's sensitive personal information; and would furnish a bond when required by the Secretary before certifying an individual as a fiduciary; and conduct a background investigation each time an individual is appointed as a fiduciary. To address concerns that performing background checks may slow the fiduciary appointment process, authority is provided to the Secretary to expedite background checks where necessary.

Many documented cases also exist where a veteran had never met nor heard from his or her fiduciary, in addition to cases where VA experienced difficulty contacting fiduciaries it had appointed. This lack of accountability on the part of fiduciaries, coupled with VA's lack of oversight, contributed to veterans not receiving the necessary funds to pay basic utilities and predatory fiduciaries making a profit at the expense of the veteran. To address this, Section 2 of H.R. 5489, as amended, contains a provision that requires an annual accounting by fiduciaries that will consist of benefits earned, benefits disbursed, and the remaining balance as well as other sources of income for that veteran that the fiduciary controls. The fiduciary must also report any events affecting his or her ability to serve the veteran including criminal convictions, bankruptcy filings, and judgments filed against the fiduciary, and any events reported in the annual accounting may be considered by the Secretary in determining a fiduciary's ability to serve the best interest of the veteran. This report would then be transmitted to the veteran beneficiary or guardian.

#### SECTION 3—ESTABLISHMENT OF PLACE OF REMEMBRANCE AT ARLINGTON NATIONAL CEMETERY

Section 3 of H.R. 5948, as amended, is derived from H.R. 5735, and would create a new monument at Arlington National Cemetery known as the Place of Remembrance.

In an article from December 7, 2011, The Washington Post reported that "976 fragments from 274 military personnel from the Dover Air Force Base mortuary were cremated, incinerated and taken to the Prince George's landfill between 2004 and 2008." Accordingly, this legislation aims to prevent what happened at Dover Air Force Base from recurring by creating a dignified resting place for certain remains of veterans that may otherwise not have a designated final resting place.

Under Section 3, the design of the Place of Remembrance would be deferred to the Secretary of the Army, who would prescribe regulations as necessary to carry out the design, and otherwise determine the logistics of establishing and constructing the Place of Remembrance.



Specifically, remains that would be authorized for interment at the Place of Remembrance include fragments of the remains of a deceased member of the Armed Forces (or fragments reasonably believed to be from the remains of a deceased member of the Armed Forces) that: (1) are unidentifiable by use of DNA testing or other means because of the condition of the fragments; (2) are unclaimed after a reasonable period of time; (3) are identified and authorized for interment in the Place of Remembrance by the person designated under section 1482(c) of title 10, United States Code, to direct disposition of the remains of the member; or (4) are designated as “No Further Pursuit” remains in cases in which the family of a deceased member has indicated to the Secretary of the Army that the family does not want to be consulted when fragments of the remains of the member are found.

#### SECTION 4—FURNISHING CASKETS AND URNS FOR DECEASED VETERANS WITH NO KNOWN NEXT OF KIN

Section 4 of H.R. 5948, as amended, is derived from H.R. 6073. This bill was introduced in direct response to an incident at Bushnell National Cemetery where an indigent veteran with no next of kin was buried in a cardboard box. This section would prevent similar future occurrences of such an incident by requiring the Secretary to furnish an appropriate casket or urn for a deceased veteran with no known next of kin, where no other person claims the body, and the veteran lacks sufficient resources to cover burial and funeral expenses.

#### SECTION 5—IMPROVED COMMUNICATION BETWEEN DEPARTMENT OF VETERANS AFFAIRS AND MEDICAL EXAMINERS AND FUNERAL DIRECTORS

Section 5 of H.R. 5948, as amended, is derived from H.R. 6073. This bill was introduced in direct response to an incident at Bushnell National Cemetery where an indigent veteran with no next of kin was buried in a cardboard box. This section would require the Secretary, in the case of a deceased veteran with no known next of kin or person claiming the body, and when the veteran lacks sufficient resources to cover burial and funeral expenses, to ensure that any entity responsible for transporting the body of a deceased veteran to a national cemetery submits to VA whether the deceased veteran was cremated and steps taken to ensure the deceased veteran has no next of kin.

#### SECTION 6—REPORT ON COMPLIANCE OF DEPARTMENT OF VETERANS AFFAIRS WITH INDUSTRY STANDARDS FOR CASKETS AND URNS

Section 6 of H.R. 5948, as amended, is derived from H.R. 6073. This bill was introduced in direct response to an incident at Bushnell National Cemetery where an indigent veteran with no next of kin was buried in a cardboard box. This section would require the Secretary to submit to both the House and Senate Committees on Veteran’s Affairs a report within 180 days of enactment of this legislation detailing VA’s compliance with industry standards for caskets and urns, including a description of the industry standards for caskets and urns and an assessment of compliance at the National Cemeteries administered by VA.

SECTION 7—EXCLUSION OF PERSONS CONVICTED OF COMMITTING CERTAIN SEX OFFENSES FROM INTERMENT OR MEMORIALIZATION IN NATIONAL CEMETERIES, ARLINGTON NATIONAL CEMETERY, AND CERTAIN STATE VETERANS' CEMETERIES AND FROM RECEIVING CERTAIN FUNERAL HONORS

Section 7 of H.R. 5948, as amended, is derived from H.R. 2355, and would bar convicted Tier III sex offenders under the Sex Offender Registration and Notification Act from burial in national veterans cemeteries and some state veterans cemeteries, if the offender is convicted of such an offense, that conviction is final, and the offender is sentenced to a minimum of life imprisonment.

Current law prohibits individuals convicted of capital crimes, such as murder or treason, from burial in a national veterans' cemetery and some state veterans cemeteries. Although Congress has been reluctant to restrict the rights that veterans earned during service due to actions that took place after service, some crimes are of such a serious and heinous nature that compel revocation of those rights in an effort to preserve the honor and dignity of the service members who would be resting beside such offenders in a national veterans cemetery or state veterans cemetery. A sex offense meriting life in prison is an example of one such crime and Section 7 would appropriately include it as a disqualifier of burial honors under Title 38.

SECTION 8—VETERANS FREEDOM OF CONSCIENCE PROTECTION

Section 8 of H.R. 5948, as amended, is derived from H.R. 2720, and would ensure that, to the extent practicable, the express wishes of a veteran's family with regard to religious expressions are honored during interment or inurnment ceremonies at a VA national cemetery. This would include ensuring the availability, to the extent practicable, of cemetery grounds and appropriate facilities for the purposes of mourning and reflection, and allowing VSO honor guard access to the ceremony if requested by the family. In addition, any person aggrieved by a violation of this subsection would have the right to a private cause of action in an appropriate Federal Court.

Section 8 is in direct response to an incident at the Houston National Cemetery in May 2011. At that time, cemetery officials were accused of banning use of religious speech during services at the ceremony. A lawsuit was brought before the U.S. District Court for the Southern District of Texas, Houston Division and a settlement decree was entered into. Although the settlement decree addressed the specific incidents at Houston National Cemetery, this legislation was brought to ensure that a similar incident does not take place at another VA national cemetery.

SECTION 9—AUTHORITY FOR THE PERFORMANCE OF MEDICAL DISABILITY EXAMINATIONS BY CONTRACT PHYSICIANS

Section 9 of H.R. 5948, as amended, is derived from H.R. 5880, which would extend VA's authority to enter into contracts with private physicians to conduct medical disability examinations from December 31, 2012, to December 31, 2017.

The need for this legislation was made clear at a hearing held on April 23, 2012, entitled "Discovering a More Efficient Process:

Improving Timeliness and Adequacy of VA Compensation and Pension Examinations.” Witnesses at that hearing unanimously testified that contract examinations are an integral part of the C&P examination process and that VA would be severely disadvantaged if the authority to use this type of examination was allowed to expire.

In addition, VA specifically requested this extension in its Fiscal Year 2013 budget submission, stating:

This proposal would extend by five years a provision of P.L. 108–183, section 704, for the authority to use discretionary VBA funding to procure contracted disability examinations to supplement the examinations provided by VHA and procured at 10 VBA regional offices through contracts reimbursed from mandatory Compensation and Pensions account under the authority of P.L. 104–275, section 504. The sunset date provided in section 704 was most recently extended to December 31, 2012, by P.L. 111–275, section 809. The requested extension would be advantageous to planning and executing appropriate contracts for future examinations in the most needed regions of the country. (U.S. Department of Veterans Affairs Fiscal Year 2013 Budget Submission, Vol. 3, pg. 2A–24.)

#### SECTION 10—PROVISION OF ACCESS TO CASE-TRACKING INFORMATION

Section 10 of H.R. 5948, as amended, is derived from H.R. 5881, which would allow county veterans service officers and some Congressional employees access to read-only information regarding the status of pending claims. Privacy concerns would be addressed through a certification step each time information is accessed, and through required VA privacy certification training.

The need for this legislation was made clear during a round table discussion on May 14, 2012, between Committee staff and various County Veteran Service Officers (CVSOs), to discuss issues that affect them while trying to assist veterans. One of the main issues discussed was lack of access to claims file information, which impeded CVSOs ability to answer veterans’ questions about their claims. Although many veterans use a nationally chartered veteran service organization (VSO) as their Power of Attorney (POA) during the claims process, this contact is often unable to timely respond to veterans’ status requests due to workload constraints. Therefore, this legislation aims to provide such access, which should assist in preventing veterans from filing duplicate claims and overburdening VA’s 1–800 telephone number.

#### SECTION 11—NOTIFICATION BY THE SECRETARY OF VETERANS AFFAIRS OF INDIVIDUALS WHOSE SENSITIVE PERSONAL INFORMATION IS INVOLVED IN A DATA BREACH

Section 11 of H.R. 5948, as amended, is based on language in H.R. 3730, and is intended to provide better protections to veterans whose sensitive information has been compromised by VA.

Currently, a veteran may not learn of his or her personally identifiable information (PII) having been compromised by VA until 30 to 60 days after such a compromise has taken place. The problem with the length of delay between a breach having occurred, VA learning of the breach, and a veteran learning of a breach involving

his or her PII is that the damage done in the areas of identity theft and credit ratings using that compromised information could take years to repair.

In discussions with Committee staff, VA indicated that it could reduce the notification time period without difficulty to a period of 10 business days. By reducing this period of time, a veteran has a much greater chance of being able to take action to protect his or her identity and avoid a lengthy fight in correcting harmful and unknown actions by an identity thief.

Section 11 of H.R. 5948, as amended, would require the Secretary, in the event of a data breach involving PII, to notify Congress and all individuals whose information is compromised within 10 days of the Secretary becoming aware a breach has occurred, or within 15 days if meeting the 10 day timeframe is not feasible. Section 11 of H.R. 5948, as amended, would further require the Secretary to provide all individuals affected by the data breach with a description of the sensitive personal information compromised and information regarding steps they can take to protect their information from unauthorized use, and to notify the general public through the Office of Public Affairs by not later than 10 days after the date on which the Secretary learns of the breach.

#### SECTION 12—LIMITATION ON BONUSES FOR DEPARTMENT OF VETERANS AFFAIRS EMPLOYEES WHO VIOLATE FEDERAL CIVIL LAWS OR REGULATIONS

Section 12 of H.R. 5948, as amended, is based on H.R. 4481, as amended.

Federal Acquisition Regulations (FAR) and their VA counterpart, VA Acquisition Regulations (VAAR), are codified in chapter 13 of title 41, United States Code, and chapter 8 of title 48, United States Code of Federal Regulations. As such, violations of these regulations are violations of U.S. law. During questioning at a February 2012 hearing regarding illegal purchases made by VA employees through the Department's Pharmaceutical Prime Vendor (PPV), the Department conceded that it did not know of any penalties that may be instituted for violations of FAR by its employees, nor had it pursued any actions against personnel that had violated FAR. At no time prior to questioning at this hearing did VA note that the actions of its employees were illegal despite that fact being relatively clear.

The violations of FAR and VAAR referenced during the February 2012 PPV hearing were unauthorized commitments of the federal government by VA purchasing agents. In summary, VA purchasers had exceeded their purchasing authority over many years and illegally indebted the federal government for hundreds of millions of dollars. Due to VA's inability and unwillingness to fully track and account for all of the past purchases, a final dollar amount for the illegal purchases will most likely never be determined.

Even if VA continues to ignore the unauthorized commitments by its employees and takes no action to recoup the funds from the purchasers, the Department still has its own table of penalties for addressing these violations. However, no employees had been held accountable prior to the February 2012 PPV hearing, and by the time a follow-up PPV hearing was held in June 2012, very few employ-

ees had received any disciplinary action based on provisions within FAR and VAAR or VA's table of penalties.

Given VA's lack of oversight over its own purchasers, as well as a documented lack of oversight over its awarding of bonuses and incentives, this provision will ensure that VA employees will not be awarded for failing to comply with Federal laws and regulations, including the FAR and VAAR, even if these failures are not subject to disciplinary action. This commonsense approach to stewardship of taxpayer dollars will rein in the haphazard process of awarding bonuses and incentives that has been prevalent within VA.

SECTION 13—LIMITATION ON AWARDS AND BONUSES TO EMPLOYEES  
OF THE DEPARTMENT OF VETERANS AFFAIRS

VA currently disburses an annual average of approximately \$400,000,000 in bonuses, awards, and other incentives. These incentives include Group Cash Awards, Travel Savings Incentives, Individual Cash Awards (Not Rating Based), Presidential Rank Awards, SES Performance Awards, Individual Cash Awards (Rating Based), Individual Suggestion/Invention Awards, Group Suggestion/Invention Awards, Foreign Language Awards, Group Awards—Other, Specialty Certification Awards, Exemplary Job Performance/Achievement Awards, Lump Sum Performance Payments (Rating Based-In Lieu of Pay Adjustment), Lump Sum Performance Payments (Rating Based Not in Lieu of Pay Adjustment), Lump Sum Performance Payments (Not Rating Based), Retention Incentives, Recruitment Incentives, and Relocation Incentives. In addition, VA also awards Individual Time Off Awards—Hours and Group Time Off Awards—Hours that are not readily quantified into dollar amounts.

The Office of Personnel Management (OPM) issues a guide to federal agencies for processing these awards, many of which are covered under title 5, United States Code. Further policy for awarding bonuses and other incentives is established by VA's Office of Human Resources Management. This policy is then executed at multiple levels throughout VA all the way down to facility directors.

In a November 14, 2011, report titled "Audit of Retention Incentives for Veterans Health Administration and VA Central Office Employees," (VAOIG 10-02887-30) VA's Office of Inspector General (VAOIG) identified that approving officials within both the Department of Veterans Affairs Central Office (VACO) and the Veterans Health Administration (VHA) did not adequately justify retention incentive awards. In the awards reviewed, VAOIG also consistently identified missing support documentation to accompany the award.

The VAOIG's findings were consistent with the Committee's findings of bonuses being awarded to employees with less than satisfactory performance evaluations and retention incentives being awarded to employees who had stated their intention to retire in the very near future.

Based on numbers provided by VA, the limit on bonuses contained in Section 13 of H.R. 5948, as amended, is 90% of the three-year average on bonuses paid of \$397,348,032.90. This modest reduction, that does not include additional time off awards, leaves

sufficient funding for VA to award suitable bonuses and other incentives to deserving employees.

#### SECTION 14—SENSE OF CONGRESS ON PATRIOT GUARD RIDERS

Section 14 of H.R. 5948, as amended, is derived from H. Res. 669. The Patriot Guard Riders have over 220,000 members nationwide and, by invitation of the family, participate in the funerals of armed service members killed in action. Their participation includes shielding the family from protestors and other disturbing interruptions.

This section would commend the Patriot Guard Riders and all of the other volunteers involved in shielding the mourning family and friends of a fallen member of the Armed Forces from interruptions created by any protestor or group of protestors; and would recognize the sacrifices that veterans, members of the Armed Forces, and their families have made, and continue to make, on behalf of the United States.

#### SECTION 15—SENSE OF CONGRESS HONORING KOREAN WAR VETERAN

Section 15 of H.R. 5948, as amended, is derived from H. Res. 618. The 60th anniversary of the Korean cease-fire agreement occurs in July 2013. This section recognizes the importance of the contributions and sacrifices made by Korean War veterans.

### HEARINGS

On June 6, 2012, the Subcommittee on Disability Assistance and Memorial Affairs conducted a legislative hearing on various bills introduced during the 112th Congress, including H.R. 5735, H.R. 2355, H.R. 2720, H.R. 5880, and H.R. 5881. The following witnesses testified: The Honorable Steve Stivers, U.S. House of Representatives; The Honorable Vicky Hartzler, U.S. House of Representatives; The Honorable Larry Kissell, U.S. House of Representatives; The Honorable John Culberson, U.S. House of Representatives; Mr. Raymond Kelley, National Legislative Director, Veterans of Foreign Wars; Mr. James Young, President, National Association of County Veterans' Service Officers; Mr. Jeff Hall, Assistant National Legislative Director, Disabled American Veterans; Ms. Debbie Lee, Founder, America's Mighty Warriors; Ms. Lisa Ward, Widow to Major Richard Ward, U.S. Army, Persian Gulf War; Mr. Kelly Shackelford, President, The Liberty Institute; Jay Sanders, Senior Vice Commander, Veterans of Foreign Wars, District 4; Ms. Kathryn Condon, Executive Director, Army National Cemeteries Program; and Mr. Thomas Murphy, Director of Compensation and Pension Service, U.S. Department of Veterans Affairs, who was accompanied by Mr. Richard Hippolit, Office of the General Counsel, U.S. Department of Veterans Affairs.

A Statement for the Record was submitted by The Honorable Ted Poe, U.S. House of Representatives.

On June 20, 2012, the Subcommittee on Oversight and Investigations conducted a legislative hearing on various bill introduced during the 112th Congress including H.R. 2985, H.R. 3730, H.R. 4481, and H.R. 5948. The following witnesses testified: The Honorable Todd Akin, U.S. House of Representatives; Mr. Dave McLenachen, Director of Pension and Fiduciary Service, U.S. Department of Vet-

erans Affairs; Mr. Ralph Ibson, National Policy Director, Wounded Warrior Project; Ms. Lauren Kolage, Deputy Director of Veterans Benefits Program, Vietnam Veterans of America; Ms. Heather Ansley, Vice President of Veterans Policy, VetsFirst; and Ms. Lori Perkio, Assistant Director, Veterans Affairs and Rehabilitation Commission, The American Legion.

#### SUBCOMMITTEE CONSIDERATION

On June 27, 2012, the Subcommittee on Disability Assistance and Memorial Affairs met in an open markup session, a quorum being present, and favorably forwarded to the full Committee H.R. 5735, as amended, H.R. 5880 and H.R. 5881, by voice vote.

During consideration of H.R. 5735 the following amendment was considered and agreed to by voice vote:

An amendment in the nature of a substitute incorporating provisions from H.R. 2355 and H.R. 2720.

On June 27, 2012, the Subcommittee on Oversight and Investigations met in an open markup session, a quorum being present, and favorably forwarded to the full Committee H.R. 3730, as amended, H.R. 4481, as amended, and H.R. 5948, as amended, by voice vote.

During consideration of H.R. 3730 the following amendment was considered and agreed to by voice vote:

An amendment by Mr. Donnelly of Indiana to change when notifications were required.

During consideration of H.R. 4481 the following amendment was considered and agreed to by voice vote:

An amendment in the nature of a substitute offered by Mr. Roe of Tennessee.

During consideration of H.R. 5948 the following amendment was considered and agreed to by voice vote:

An amendment in the nature of a substitute offered by Mr. Johnson of Ohio.

#### COMMITTEE CONSIDERATION

On July 11, 2012, the full Committee met in an open markup session, a quorum being present, and ordered H.R. 5948, as amended, reported favorably to the House of Representatives by voice vote. During consideration of the bill, the following amendment was considered:

An amendment in the nature of a substitute, by Mr. Johnson of Ohio, which contained provisions affecting veteran burial benefits, health benefits, restricting bonus payments by VA, commending the Patriot Guard Riders, and recognizing Korean War veterans was agreed to by voice vote.

#### COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the recorded votes on the motion to report the legislation and amendments thereto. There were no recorded votes taken on amendments or in connection with ordering H.R. 5948, as amended, reported to the House. A motion by Ranking Member Bob Filner of California to order H.R. 5948, as amended, reported favorably to the House of Representatives was agreed to by voice vote.

## COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of rule XIII and clause (2)(b)(1) of rule X of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in the descriptive portions of this report.

## STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

In accordance with clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee's performance goals and objectives are reflected in the descriptive portions of this report.

## NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee adopts as its own the estimate of new budget authority, entitlement authority, or tax expenditures or revenues contained in the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

## EARMARKS AND TAX AND TARIFF BENEFITS

H.R. 5948, as amended, does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI of the Rules of the House of Representatives.

## COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate on H.R. 5948, as amended, prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

## CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate for H.R. 5948, as amended, provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, September 18, 2012.*

Hon. JEFF MILLER,  
*Chairman, Committee on Veterans' Affairs,*  
*House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 5948, a bill to amend title 38, United States Code, to improve the supervision of fiduciaries of veterans under the laws administered by the Secretary of Veterans Affairs, and for other purposes.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Dwayne M. Wright.

Sincerely,

DOUGLAS W. ELMENDORF.



Enclosure.

*H.R. 5948—A bill to amend title 38, United States Code, to improve the supervision of fiduciaries of veterans under laws administered by the Secretary of Veterans Affairs, and for other purposes*

Summary: H.R. 5948 would make changes to certain administrative procedures and programs of the Department of Veterans Affairs (VA), including the fiduciary program, limits on bonuses for employees, and medical disability examinations by contract physicians. CBO estimates that implementing H.R. 5948 would have a discretionary cost of \$53 million over the 2013–2017 period, assuming appropriation of the necessary amounts. Also, CBO estimates that enacting H.R. 5948 would increase direct spending by \$1 million over the 2013–2017 period, for burial programs.

Pay-as-you-go procedures apply because enacting this legislation would affect direct spending. Enacting H.R. 5948 would not affect revenues.

H.R. 5948 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA).

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 5948 is shown in the following table. The costs of this legislation fall within budget function 700 (veterans benefits and services).

	By fiscal year, in millions of dollars—					
	2013	2014	2015	2016	2017	2013–2017
CHANGES IN SPENDING SUBJECT TO APPROPRIATION						
Limit on Awards and Bonuses to VA Employees:						
Estimated Authorization Level .....	–53	–57	–61	–65	–69	–305
Estimated Outlays .....	–53	–57	–61	–65	–69	–305
Improvement of Fiduciary Program for Veterans:						
Estimated Authorization Level .....	37	38	38	39	40	192
Estimated Outlays .....	37	38	38	39	40	192
Disability Examinations by Contract Physicians:						
Estimated Authorization Level .....	22	29	29	29	29	138
Estimated Outlays .....	22	29	29	29	29	138
Provision of Access to Case-Tracking System:						
Estimated Authorization Level .....	6	5	5	5	5	26
Estimated Outlays .....	6	5	5	5	5	26
Establishment of Place of Remembrance at Arlington National Cemetery:						
Estimated Authorization Level .....	*	*	*	*	*	1
Estimated Outlays .....	*	*	*	*	*	1
Other Provisions:						
Estimated Authorization Level .....	*	*	*	*	*	1
Estimated Outlays .....	*	*	*	*	*	1
Total Changes:						
Estimated Authorization Level .....	12	15	11	8	5	53
Estimated Outlays .....	12	15	11	8	5	53

Notes: In addition to the changes in spending subject to appropriation shown above, CBO estimates that enacting H.R. 5948 would increase direct spending by \$1 million over the 2013–2022 period.

Columns may not sum to totals because of rounding.

VA = Department of Veterans Affairs; \* = less than \$500,000.

Basis of estimate: For this estimate, CBO assumes appropriation actions consistent with the bill, that the legislation will be enacted near the start of fiscal year 2013, and that outlays will follow historical patterns for similar and existing programs.

*Spending subject to appropriation*

CBO estimates that implementing H.R. 5948 would cost \$53 million over the 2013–2017 period, assuming appropriation of the estimated amounts.

**Limit on Awards and Bonuses to VA Employees.** Section 13 would limit the amount that VA could pay in awards and bonuses to VA employees to about \$358 million per year over the 2013–2017 period. In 2011, VA paid about \$410 million in awards and bonus payments to employees. Assuming such payments will continue at that level, and accounting for anticipated inflation, CBO estimates that implementing section 13 would reduce discretionary spending for pay and performance by \$305 million over the 2013–2017 period, assuming appropriation actions consistent with the bill.

**Improvement of Fiduciary Program for Veterans.** Section 2 would make significant changes to VA's fiduciary program. The provision would require VA to:

- Determine the competency of individuals appointed as fiduciaries;
- Remove certain fiduciaries deemed incompetent and review the files of fiduciaries appealing such decisions;
- Maintain a list of state, local, or nonprofit agencies that could perform fiduciary duties;
- Update the qualifications and procedures for becoming a fiduciary to include: visits to proposed fiduciaries, internet training, and criminal background and credit checks;
- Require that all fiduciaries provide accounting details for VA verification; and
- Notify veterans of court-ordered fiduciaries and if a requested fiduciary is unqualified and why.

Section 2 also would require VA to maintain a database of all fiduciaries and submit a report to the Congress on the progress of the program.

Based on information from VA, CBO estimates that about 460 additional employees would need to be hired to accommodate the requirements of section 2 at an average annual cost of about \$80,000 per employee. We also estimate that the information technology systems necessary to maintain the database would cost about \$1 million per year. Therefore, CBO estimates that implementing section 2 would cost \$192 million over the 2013–2017 period, assuming appropriation of the necessary amounts.

**Disability Examinations by Contract Physicians.** Section 9 would extend the authority for VA to use contract physicians to perform medical disability examinations through December 31, 2017. Under current law, that authority expires on December 31, 2012. Based on information from VA, CBO estimates that, in 2011, VA used the current authority to have about 36,000 exams completed by contract physicians at a cost of about \$800 per exam and expects to complete the same amount each year over the 2013–2017 period.

In the absence of such authority, VA physicians who would otherwise be providing other types of health care to veterans will perform the exams, at no additional cost to VA. Thus, CBO estimates that implementing section 9 would cost \$138 million over the 2013–2017 period, assuming appropriation of the necessary amounts.

**Provision of Access to Case-Tracking System.** Section 10 would require VA to provide certain individuals, referred to as covered

employees, access to VA's case-tracking system in order to provide veterans with information regarding the status of claims submitted to VA. A covered employee under section 10 would include Members of the Congress and their staff and certain employees of state or local agencies who assist veterans with claims for benefits.

This access would be limited so that no covered employee would be able to alter any information in the system or have access to any medical records. Also, all covered employees would be required to complete a certification course on privacy issues that would be provided by VA.

CBO expects that about 8,000 Congressional, state, and local employees would take training courses and be granted access at a cost of about \$600 per employee. VA also would need to modify their system to ensure limited access. Therefore, CBO estimates that implementing section 10 would increase discretionary costs for information technology by \$26 million over the 2013–2017 period, assuming appropriation of the necessary amounts.

Establishment of Place of Remembrance at Arlington National Cemetery (ANC). Section 3 would authorize the Army to establish a Place of Remembrance in ANC for the interment of fragmentary remains of members of the Armed Forces who die or have died in any war or contingency operation or in the line of duty and are unidentifiable or unclaimed. CBO estimates that implementing section 3 would cost \$1 million over the 2013–2017 period, assuming the availability of appropriated funds.

Other Provisions. Implementing the following provisions would increase discretionary spending by a total of \$1 million over the 2013–2017 period:

- Section 6 would require VA to communicate with a funeral home when a deceased veteran has been transferred to VA and determined to have no next of kin to ensure that the funeral home has also taken measures to locate family members.
- Section 6 would require a report on VA's compliance with industry standards for caskets and urns.
- Section 7 would require VA to determine if a veteran who dies in prison is a Tier III sex offender, and therefore excluded from burial honors or burial in a VA national cemetery, Arlington National Cemetery, or state veterans' cemeteries.
- Section 8 would require VA to notify the next of kin or agent of each deceased individual eligible for burial in a national cemetery of any funeral honors available, including honors provided by the military or volunteer veterans honor guard.
- Section 11 would require VA to provide notice to the Congress, affected individuals, and the general public whenever sensitive personal information maintained by VA is breached. Such notification would be provided by email or in writing and should explain the nature of the breach, information about free credit protection services, and phone numbers where the individual can receive information on identity theft.

#### *Direct spending*

Section 4 would require VA to provide a quality casket or urn for deceased veterans with no known next of kin, in those cases where they are transferred to VA in a substandard container. Based on information from VA on the number of veterans who die per year

with no known next of kin and who are transferred to VA in substandard containers from funeral homes or other entities responsible for deceased individuals, CBO expects VA would be required to provide less than 100 caskets or urns per year for deceased veterans. CBO estimates that the required caskets or urns would have an average cost of about \$1,000 each, and thus that section 4 would increase direct spending by \$1 million over the 2013–2022 period.

Intergovernmental and private-sector impact: H.R. 5948 contains no intergovernmental or private-sector mandates as defined in UMRA. Local governments might incur some costs as a result of new requirements included in the bill, but those costs would result from participation in a voluntary federal program.

Estimate prepared by: Federal costs: Dwayne M. Wright; Impact on State, Local, and Tribal Governments: Lisa Ramirez-Branum; Impact on the Private Sector: Elizabeth Bass.

Estimate approved by: Peter H. Fontaine, Assistant Director for Budget Analysis.

#### FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates regarding H.R. 5948, as amended, prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

#### ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act would be created by H.R. 5948, as amended.

#### STATEMENT OF CONSTITUTIONAL AUTHORITY

Pursuant to Article I, section 8 of the United States Constitution, the reported bill is authorized by Congress' power to "provide for the common Defense and general Welfare of the United States."

#### APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

#### SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

##### *Section 2—Improvement of fiduciaries for veterans*

Section 2(a) would amend section 5502 of chapter 55 of title 38, United State Code, to revise the process for appointment of fiduciaries. Section 2(a) would require VA to provide a written statement to the veteran detailing the reasons for the appointment of a fiduciary and implement an appeals process which would allow a veteran to challenge the finding of mental incompetence. This part would also allow a veteran to predesignate a fiduciary, request the modification of an appointed fiduciary, and establish that a fiduciary operates independently of VA to act in the best interest of the beneficiary.

Section 2(b) would amend section 5502 of chapter 55 of title 38, United States Code, to decrease the commission appointed fiduciaries may receive to the lesser of 3% of monthly benefits or \$35. It would also allow VA attorneys to appear in a court of appropriate jurisdiction against any fiduciary who has failed to execute the duties of a VA appointed fiduciary. Section 2(b) would permit VA to temporarily make payments to the person or institution having custody and control of an incompetent or minor beneficiary. Upon the death of a beneficiary, section 2(b) would direct fiduciaries to pay all remaining funds overseen by fiduciaries to any surviving spouse, or in equal parts to any children, or in equal parts to any dependent parents. It would also require that if a beneficiary did not have a spouse, children, or dependent parents and lived in a state where the beneficiary's assets would then escheat to the state, any funds derived from VA benefits would then escheat to the United States.

Section 2(c) would amend section 5506 of chapter 55 of title 38, United States Code, to require VA to expand the definition of a person eligible to serve as a fiduciary to include state and local government agencies and nonprofits, and compel VA to maintain a list of state or local agencies and nonprofit social agencies who qualify to act as a fiduciary.

Section 2(d) would amend section 5507 of chapter 55 of title 38, United States Code, to mandate that VA investigate each fiduciary before appointment and allow VA to expedite the investigation for certain proposed fiduciaries. The investigation would include a face-to-face interview no more than 30 days after the investigation begins and a background check which would include a criminal background check and a credit check. The background check would be performed each time a person is proposed as a fiduciary. It would also require VA to notify the beneficiary if a fiduciary is convicted of certain crimes. This part would also require VA to maintain records of any person who previously served as a fiduciary and any fiduciary whose status was revoked and would require each regional office to maintain a list with the name and contact information of each fiduciary and include pertinent information related to each fiduciary's background investigation, bond payment, and the amount the fiduciary controls for each beneficiary served.

Section 2(d) would also require VA to investigate alleged misuse of benefits, and, if substantiated, to transmit the results of the investigation to the Attorney General and each head of a federal department or agency that pays benefits to fiduciaries or beneficiaries. It would also require VA to ensure that any bond furnished by a fiduciary was not paid using funds from the beneficiary and to consider the care a proposed fiduciary has taken to protect the interests of the beneficiary while also considering the capacity of the proposed fiduciary to meet the financial requirements of the bond.

Section 2(e) would amend section 5509 of chapter 55 of title 38, United States Code, to require fiduciaries to file an annual report to include the amount of benefits the beneficiary accrued during the year, if the fiduciary serves the beneficiary for non-VA benefits, an accounting of all other sources of income the fiduciary oversees for the beneficiary, and whether the fiduciary was convicted of any crime, filed bankruptcy, and any judgments entered against the fi-

duciary. It would require VA to perform random audits of fiduciaries who receive a commission. Section 2(e) would also require the Under Secretary of Benefits and the Under Secretary for Health to promulgate regulations that would not diminish the ability of fiduciaries providing care under chapter 17, title 38, United States Code, to care for beneficiaries.

Section 2(f) would amend section 5509 of chapter 55 of title 38, United States Code, to require VA to provide the Committee on Veterans' Affairs of the Senate and the Committee on Veterans' Affairs of the House of Representatives a report on the implementation of the new policies and procedures outlined in section 2 and a discussion on whether VA should offer fiduciaries standardized financial software to comply with reporting requirements.

*Section 3—Establishment of Place of Remembrance at Arlington National Cemetery*

Section 3 would add a new section, 4727, to chapter 446 of title 10, United States Code, to direct the Secretary of the Army to establish a Place of Remembrance at an appropriate location in Arlington National Cemetery for the interment of cremated remains of certain deceased members of the Armed Forces. It also directs that the regulations governing the construction and placement of the Place of Remembrance be prescribed by the Secretary of Defense.

*Section 4—Furnishing caskets and urns for deceased veterans with no known next of kin*

Section 4 would amend section 2306 of chapter 23 of title 38, United States Code, by providing that the Secretary of VA shall provide a casket or urn of such quality that the Secretary considers appropriate for a dignified burial in a national cemetery to deceased veterans with no known next of kin.

*Section 5—Improved communication between Department of Veterans Affairs and medical examiners and funeral directors*

Section 5 would add a new section, 2414, to chapter 24 of title 38, United States Code, to ensure that local medical examiners, funeral directors, or other entity responsible for the body of a deceased veteran communicate certain information to the Secretary of VA, including whether the veteran was cremated and any steps taken to ensure that the deceased veteran has no next of kin. This section also describes a deceased veteran for purposes of this section as one who has no next of kin or other person claiming the body of the deceased veteran and does not have sufficient resources to cover burial and funeral expenses.

*Section 6—Report on compliance of Department of Veterans Affairs with industry standards for caskets and urns*

Section 6 directs the Secretary of VA to submit, not later than 180 days after the enactment of this Act, a report to the House and Senate Committees on Veterans' Affairs discussing the industry standard for caskets and urns and assessment of the National Cemetery Administration's compliance with such standards.

*Section 7—Exclusion of persons convicted of committing certain sex offenses from interment or memorialization in national cemeteries, Arlington National Cemetery, and certain State veterans' cemeteries and from receiving certain funeral honors*

Section 7 amends section 2411(b) of chapter 24 of title 38, United States Code, by prohibiting those who have been convicted of certain tier III sex offenses and sentenced to a minimum of life imprisonment from burial in a VA national cemetery, Arlington National Cemetery, and certain state veterans' cemeteries as well as from receiving certain funeral honors.

*Section 8—Veterans freedom of conscience protection*

Section 8 amends section 2404 of chapter 24 of title 38, United States Code, by adding that the Secretary of VA shall, to the extent practicable, honor the wishes of the next of kin or other agent of a deceased veteran at a funeral, memorial service or ceremony, to include using public areas of the cemetery for prayer, mourning or reflection; display of any religious or other symbols chosen by the family; and the use of any military or volunteer honor guard. In addition, the section provides that anyone who is aggrieved by a violation of this section may bring a civil action in an appropriate federal court.

*Section 9—Authority for the performance of medical disability examinations by contract physicians*

Section 9 would amend section 5101 of subchapter I of chapter 51 of title 38, United States Code, by extending the authority for the performance of medical disability examinations by contract physicians from December 31, 2012, to December 31, 2017.

*Section 10—Provision of access to case-tracking information*

Section 10 adds a new section, 5906, to chapter 59 of title 38, United States Code, to provide certain employees, such as county veteran service officers and Congressional caseworkers, with access to case-tracking information at VBA. The covered employee must complete a required privacy certification course and must certify that the access is for official purposes only. The covered employee would not have access to certain private records such as medical records and will not be able to modify data in the system.

*Section 11—Notification by the Secretary of Veterans Affairs of individuals whose sensitive personal information is involved in a data breach*

Section 11 would amend subchapter III of chapter 57 of title 38, United States Code, to mandate VA to notify Congress and affected individuals when sensitive data has been breached. It would require VA to inform Congress and all individuals whose PII was compromised within 10 days of the Secretary becoming aware a breach has occurred or 15 days if the 10 day timeframe is not possible. It would also mandate VA to notify the general public within 10 days of the Secretary learning of the breach. It would also compel VA to notify individuals of a description of what PII was compromised and provide information on the steps they can take to protect their information.

*Section 12—Limitation on bonuses for Department of Veterans Affairs employees who violate Federal civil laws or regulations*

Section 12 would amend chapter 7 of title 38, United States Code, to deny bonuses to any employee of the Department who knowingly violates any law, regulation, or policy, including Federal Acquisition Regulations and Veterans Affairs Acquisition Regulations. Section 12 defines bonuses as (1) a retention incentive, (2) a retention incentive payment, (3) a retention incentive award, and (4) any other incentive requiring approval from the Central Office Human Resource Service, the Chief Business Office Workforce Management, or the Corporate Senior Executive Management Office. It would also require the Secretary to certify annually to the Congress that each bonus awarded was in accordance to this section.

*Section 13—Limitation on awards and bonuses to employees of the Department of Veterans Affairs*

Section 13 would require VA to limit the amount paid in performance awards or bonuses to \$357,613,229.

*Section 14—Sense of Congress on Patriot Guard Riders*

This section is a sense of Congress that commends the Patriot Guard riders for their volunteer efforts in shielding the mourning family and friends of fallen members of the Armed Forces from any protest groups, and recognizes the sacrifices that veterans, members of the Armed Forces, and their families have made on behalf of the United States.

*Section 15—Sense of Congress honoring Korean War Veterans*

This section is a sense of Congress that, on the occasion of the 60th anniversary of the Korean War, Congress recognizes the importance and sacrifices made by veterans of the Korean War.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

**TITLE 38, UNITED STATES CODE**

\* \* \* \* \*

**PART I—GENERAL PROVISIONS**

\* \* \* \* \*

**CHAPTER 7—EMPLOYEES**

Sec.



701. Placement of employees in military installations.

\* \* \* \* \*

713. *Limitation on bonuses.*

\* \* \* \* \*

### **§ 713. *Limitation on bonuses***

(a) *IN GENERAL.*—(1) *The Secretary shall ensure that no employee of the Department who, during any year, knowingly violates any law, regulation, or policy described in paragraph (2) receives a bonus for or during that year.*

(2) *A law, regulation, or policy described in this paragraph is any of the following:*

(A) *A Federal civil law or Federal regulation, including such civil laws or regulations covered under the Federal Acquisition Regulation and the Veterans Affairs Acquisition Regulation.*

(B) *An internal policy of the Department.*

(b) *CERTIFICATION.*—*The Secretary shall annually certify to Congress that each bonus awarded by the Secretary during the previous year was awarded in accordance with subsection (a)(1).*

(c) *BONUS DEFINED.*—*For purposes of this section, the term “bonus” includes—*

(1) *a retention incentive;*

(2) *a retention incentive payment;*

(3) *a retention incentive award; and*

(4) *any other incentive requiring approval from the Central Office Human Resource Service, the Chief Business Office Workforce Management, or the Corporate Senior Executive Management Office.*

\* \* \* \* \*

## **PART II—GENERAL BENEFITS**

\* \* \* \* \*

### **CHAPTER 23—BURIAL BENEFITS**

\* \* \* \* \*

#### **§ 2306. Headstones, markers, and burial receptacles**

(a) \* \* \*

\* \* \* \* \*

(f) *The Secretary shall furnish a casket or urn, of such quality as the Secretary considers appropriate for a dignified burial, for burial in a national cemetery of a deceased veteran described in section 2414(b) of this title.*

[(f)] (g)(1) \* \* \*

\* \* \* \* \*

[(g)] (h)(1) \* \* \*

\* \* \* \* \*

(4) *A casket or urn may not be furnished under subsection (f) for burial of a person described in section 2411(b) of this title.*

\* \* \* \* \*

## CHAPTER 24—NATIONAL CEMETERIES AND MEMORIALS

Sec.

2400. Establishment of National Cemetery Administration; composition of Administration.

\* \* \* \* \*

2414. *Communication between Department of Veterans Affairs and medical examiners and funeral directors.*

\* \* \* \* \*

### § 2404. Administration

(a) \* \* \*

\* \* \* \* \*

*(h)(1) With respect to the interment or funeral, memorial service, or ceremony of a deceased individual at a national cemetery, the Secretary shall ensure that—*

*(A) the expressed wishes of the next of kin or other agent of the deceased individual are respected and given appropriate deference when evaluating whether the proposed interment or funeral, memorial service, or ceremony affects the safety and security of the national cemetery and visitors to the cemetery;*

*(B) to the extent possible, all appropriate public areas of the cemetery, including committal shelters, chapels, and benches, may be used by the family of the deceased individual for contemplation, prayer, mourning, or reflection; and*

*(C) during such interment or funeral, memorial service, or ceremony, the family of the deceased individual may display any religious or other symbols chosen by the family.*

*(2) Subject to regulations prescribed by the Secretary under paragraph (5), including such regulations ensuring the security of a national cemetery, the Secretary shall provide to any military or volunteer veterans honor guard, including such guards belonging to a veterans service organization or other non-governmental group that provides services to veterans, access to public areas of a national cemetery if such access is requested by the next of kin or other agent of a deceased individual whose interment or funeral, memorial service, or ceremony is being held in such cemetery.*

*(3) With respect to the interment or funeral, memorial service, or ceremony of a deceased individual at a national cemetery, the Secretary shall notify the next of kin or other agent of the deceased individual of funeral honors available to the deceased veteran, including such honors provided by any military or volunteer veterans honor guard described in paragraph (2).*

*(4) Any person aggrieved by a violation of this subsection or any regulation prescribed pursuant to this subsection may in a civil action in an appropriate Federal court obtain any appropriate relief against the Federal Government with respect to the violation. Standing to assert a claim or defense under this subsection shall be governed by the general rules of standing under Article III of the Constitution.*

*(5) The Secretary shall prescribe regulations to carry out this subsection.*

\* \* \* \* \*

**§ 2411. Prohibition against interment or memorialization in the National Cemetery Administration or Arlington National Cemetery of persons committing Federal or State capital crimes**

(a)(1) \* \* \*

(2) In the case of a person described in subsection (b)(1) [or (b)(2)], (b)(2), or (b)(4), the prohibition under paragraph (1) shall not apply unless written notice of a conviction referred to in subsection (b)(1) [or (b)(2)], (b)(2), or (b)(4), as the case may be, is received by the appropriate Federal official before such official approves an application for the interment or memorialization of such person. Such written notice shall be furnished to such official by the Attorney General, in the case of a Federal [capital] crime, or by an appropriate State official, in the case of a State [capital] crime.

(b) A person referred to in subsection (a) is any of the following:

(1) \* \* \*

\* \* \* \* \*

(4) A person—

(A) who has been convicted of a Federal or State crime causing the person to be a tier III sex offender for purposes of the Sex Offender Registration and Notification Act (42 U.S.C. 16901 et seq.);

(B) who, for such crime, is sentenced to a minimum of life imprisonment; and

(C) whose conviction is final (other than a person whose sentence was commuted by the President or Governor of a State, as the case may be).

\* \* \* \* \*

**§ 2414. Communication between Department of Veterans Affairs and medical examiners and funeral directors**

(a) *REQUIRED INFORMATION.*—With respect to each deceased veteran described in subsection (b) who is transported to a national cemetery for burial, the Secretary shall ensure that the local medical examiner, funeral director, county service group, or other entity responsible for the body of the deceased veteran before such transportation submits to the Secretary the following information:

(1) Whether the deceased veteran was cremated.

(2) The steps taken to ensure that the deceased veteran has no next of kin.

(b) *DECEASED VETERAN DESCRIBED.*—A deceased veteran described in this subsection is a deceased veteran whom the Secretary determines—

(1) that there is no next of kin or other person claiming the body of the deceased veteran; and

(2) does not have sufficient resources to cover burial and funeral expenses.

(c) *DETERMINATION OF SUFFICIENT RESOURCES.*—If the Secretary is unable to make a reasonable determination of the amount of the resources of a deceased veteran under subsection (b)(2), the Sec-

*retary shall deem such resources to be an amount that is not sufficient to cover burial and funeral expenses.*

\* \* \* \* \*

## **PART IV—GENERAL ADMINISTRATIVE PROVISIONS**

\* \* \* \* \*

### **CHAPTER 55—MINORS, INCOMPETENTS, AND OTHER WARDS**

Sec.

5501. Commitment actions.

**5502. Payments to and supervision of fiduciaries.]**

*5502. Appointment of fiduciaries.*

*5502A. Supervision of fiduciaries.*

\* \* \* \* \*

**5509. Authority to require fiduciary to receive payments at regional offices of the Department when failing to provide required accounting.]**

*5509. Annual reports and accountings of fiduciaries.*

\* \* \* \* \*

#### **[§ 5502. Payments to and supervision of fiduciaries**

[(a)(1) Where it appears to the Secretary that the interest of the beneficiary would be served thereby, payment of benefits under any law administered by the Secretary may be made directly to the beneficiary or to a relative or some other fiduciary for the use and benefit of the beneficiary, regardless of any legal disability on the part of the beneficiary. Where, in the opinion of the Secretary, any fiduciary receiving funds on behalf of a Department beneficiary is acting in such a number of cases as to make it impracticable to conserve properly the estates or to supervise the persons of the beneficiaries, the Secretary may refuse to make future payments in such cases as the Secretary may deem proper.

[(2) In a case in which the Secretary determines that a commission is necessary in order to obtain the services of a fiduciary in the best interests of a beneficiary, the Secretary may authorize a fiduciary appointed by the Secretary to obtain from the beneficiary's estate a reasonable commission for fiduciary services rendered, but the commission for any year may not exceed 4 percent of the monetary benefits under laws administered by the Secretary paid on behalf of the beneficiary to the fiduciary during such year. A commission may not be authorized for a fiduciary who receives any other form of remuneration or payment in connection with rendering fiduciary services for benefits under this title on behalf of the beneficiary.

[(b) Whenever it appears that any fiduciary, in the opinion of the Secretary, is not properly executing or has not properly executed the duties of the trust of such fiduciary or has collected or paid, or is attempting to collect or pay, fees, commissions, or allowances that are inequitable or in excess of those allowed by law for the duties performed or expenses incurred, or has failed to make such payments as may be necessary for the benefit of the ward or the dependents of the ward, then the Secretary may appear, by the Secretary's authorized attorney, in the court which has appointed

such fiduciary, or in any court having original, concurrent, or appellate jurisdiction over said cause, and make proper presentation of such matters. The Secretary, in the Secretary's discretion, may suspend payments to any such fiduciary who shall neglect or refuse, after reasonable notice, to render an account to the Secretary from time to time showing the application of such payments for the benefit of such incompetent or minor beneficiary, or who shall neglect or refuse to administer the estate according to law. The Secretary may require the fiduciary, as part of such account, to disclose any additional financial information concerning the beneficiary (except for information that is not available to the fiduciary). The Secretary may appear or intervene by the Secretary's duly authorized attorney in any court as an interested party in any litigation instituted by the Secretary or otherwise, directly affecting money paid to such fiduciary under this section.

[(c) Authority is hereby granted for the payment of any court or other expenses incident to any investigation or court proceeding for the appointment of any fiduciary or other person for the purpose of payment of benefits payable under laws administered by the Secretary or the removal of such fiduciary and appointment of another, and of expenses in connection with the administration of such benefits by such fiduciaries, or in connection with any other court proceeding hereby authorized, when such payment is authorized by the Secretary.

[(d) All or any part of any benefits the payment of which is suspended or withheld under this section may, in the discretion of the Secretary, be paid temporarily to the person having custody and control of the incompetent or minor beneficiary, to be used solely for the benefit of such beneficiary, or, in the case of an incompetent veteran, may be apportioned to the dependent or dependents, if any, of such veteran. Any part not so paid and any funds of a mentally incompetent or insane veteran not paid to the chief officer of the institution in which such veteran is a patient nor apportioned to the veteran's dependent or dependents may be ordered held in the Treasury to the credit of such beneficiary. All funds so held shall be disbursed under the order and in the discretion of the Secretary for the benefit of such beneficiary or the beneficiary's dependents. Any balance remaining in such fund to the credit of any beneficiary may be paid to the beneficiary if the beneficiary recovers and is found competent, or if a minor, attains majority, or otherwise to the beneficiary's fiduciary, or, in the event of the beneficiary's death, to the beneficiary's personal representative, except as otherwise provided by law; however, payment will not be made to the beneficiary's personal representative if, under the law of the beneficiary's last legal residence, the beneficiary's estate would escheat to the State. In the event of the death of a mentally incompetent or insane veteran, all gratuitous benefits under laws administered by the Secretary deposited before or after August 7, 1959, in the personal funds of patients trust fund on account of such veteran shall not be paid to the personal representative of such veteran, but shall be paid to the following persons living at the time of settlement, and in the order named: The surviving spouse, the children (without regard to age or marital status) in equal parts, and the dependent parents of such veteran, in equal parts. If any balance remains, such balance shall be deposited to the credit of

the applicable current appropriation; except that there may be paid only so much of such balance as may be necessary to reimburse a person (other than a political subdivision of the United States) who bore the expenses of last sickness or burial of the veteran for such expenses. No payment shall be made under the two preceding sentences of this subsection unless claim therefor is filed with the Secretary within five years after the death of the veteran, except that, if any person so entitled under said two sentences is under legal disability at the time of death of the veteran, such five-year period of limitation shall run from the termination or removal of the legal disability.

[(e) Any funds in the hands of a fiduciary appointed by a State court or the Secretary derived from benefits payable under laws administered by the Secretary, which under the law of the State wherein the beneficiary had last legal residence would escheat to the State, shall escheat to the United States and shall be returned by such fiduciary, or by the personal representative of the deceased beneficiary, less legal expenses of any administration necessary to determine that an escheat is in order, to the Department, and shall be deposited to the credit of the applicable revolving fund, trust fund, or appropriation.]

#### **§5502. Appointment of fiduciaries**

(a) *APPOINTMENT.*—(1) *Where it appears to the Secretary that the interest of the beneficiary would be served thereby, payment of benefits under any law administered by the Secretary may be made directly to the beneficiary or to a relative or some other fiduciary for the use and benefit of the beneficiary, regardless of any legal disability on the part of the beneficiary.*

(2) *When in the opinion of the Secretary, a temporary fiduciary is needed in order to protect the benefits provided to the beneficiary under any law administered by the Secretary while a determination of incompetency is being made or appealed or a fiduciary is appealing a determination of misuse, the Secretary may appoint one or more temporary fiduciaries for a period not to exceed 120 days. If a final decision has not been made within 120 days, the Secretary may not continue the appointment of the fiduciary without obtaining a court order for appointment of a guardian, conservator, or other fiduciary under the authority provided in section 5502(b) of this title.*

(b) *APPEALS.*—(1) *If the Secretary determines a beneficiary to be mentally incompetent for purposes of appointing a fiduciary under this chapter, the Secretary shall provide such beneficiary with a written statement detailing the reasons for such determination.*

(2) *A beneficiary whom the Secretary has determined to be mentally incompetent for purposes of appointing a fiduciary under this chapter may appeal such determination.*

(c) *MODIFICATION.*—(1) *A beneficiary for whom the Secretary appoints a fiduciary under this chapter may, at any time, request the Secretary to—*

(A) *remove the fiduciary so appointed; and*

(B) *have a new fiduciary appointed.*

(2) *The Secretary shall comply with a request under paragraph (1) unless the Secretary determines that the request is not made in good faith.*

(3) *The Secretary shall ensure that any removal or new appointment of a fiduciary under paragraph (1) does not delay or interrupt the beneficiary's receipt of benefits administered by the Secretary.*

(d) *INDEPENDENCE.—A fiduciary appointed by the Secretary shall operate independently of the Department to determine the actions that are in the interest of the beneficiary.*

(e) *PREDESIGNATION.—A veteran may predesignate a fiduciary by—*

*(1) submitting written notice to the Secretary of the predesignated fiduciary; or*

*(2) submitting a form provided by the Secretary for such purpose.*

(f) *APPOINTMENT OF NON-PREDESIGNATED FIDUCIARY.—If a beneficiary designates an individual to serve as a fiduciary under subsection (e) and the Secretary appoints an individual not so designated as the fiduciary for such beneficiary, the Secretary shall notify such beneficiary of—*

*(1) the reason why such designated individual was not appointed; and*

*(2) the ability of the beneficiary to modify the appointed fiduciary under subsection (c).*

(g) *PRIORITY OF APPOINTMENT.—In appointing a fiduciary under this chapter, if a beneficiary does not designate a fiduciary pursuant to subsection (e), to the extent possible the Secretary shall appoint a person who is—*

*(1) a relative of the beneficiary;*

*(2) appointed as guardian of the beneficiary by a court of competent jurisdiction; or*

*(3) authorized to act on behalf of the beneficiary under a durable power of attorney.*

#### **§5502A. Supervision of fiduciaries**

(a) *COMMISSION.—(1)(A) In a case in which the Secretary determines that a commission is necessary in order to obtain the services of a fiduciary in the best interests of a beneficiary, the Secretary may authorize a fiduciary appointed by the Secretary to obtain from the monthly benefits provided to the beneficiary a reasonable commission for fiduciary services rendered, but the commission for any month may not exceed the lesser of the following amounts:*

*(i) The amount that equals three percent of the monthly monetary benefits under laws administered by the Secretary paid on behalf of the beneficiary to the fiduciary.*

*(ii) \$35.*

*(B) A commission paid under this paragraph may not be derived from any award to a beneficiary regarding back pay or retroactive benefits payments.*

*(C) A commission may not be authorized for a fiduciary who receives any other form of remuneration or payment in connection with rendering fiduciary services for benefits under this title on behalf of the beneficiary.*

*(D) In accordance with section 6106 of this title, a commission may not be paid to a fiduciary if the Secretary determines that the fiduciary misused any benefit payments of a beneficiary.*

(E) *If the Secretary determines that the fiduciary has misused any benefit or payments of a beneficiary, the Secretary may revoke the fiduciary status of the fiduciary.*

(2) *Where, in the opinion of the Secretary, any fiduciary receiving funds on behalf of a Department beneficiary is acting in such a number of cases as to make it impracticable to conserve properly the estates or to supervise the persons of the beneficiaries, the Secretary may refuse to make future payments in such cases as the Secretary may deem proper.*

(b) *COURT.*—Whenever it appears that any fiduciary, in the opinion of the Secretary, is not properly executing or has not properly executed the duties of the trust of such fiduciary or has collected or paid, or is attempting to collect or pay, fees, commissions, or allowances that are inequitable or in excess of those allowed by law for the duties performed or expenses incurred, or has failed to make such payments as may be necessary for the benefit of the ward or the dependents of the ward, then the Secretary may appear, by the Secretary's authorized attorney, in the court which has appointed such fiduciary, or in any court having original, concurrent, or appellate jurisdiction over said cause, and make proper presentation of such matters. The Secretary, in the Secretary's discretion, may suspend payments to any such fiduciary who shall neglect or refuse, after reasonable notice, to render an account to the Secretary from time to time showing the application of such payments for the benefit of such incompetent or minor beneficiary, or who shall neglect or refuse to administer the estate according to law. The Secretary may require the fiduciary, as part of such account, to disclose any additional financial information concerning the beneficiary (except for information that is not available to the fiduciary). The Secretary may appear or intervene by the Secretary's duly authorized attorney in any court as an interested party in any litigation instituted by the Secretary or otherwise, directly affecting money paid to such fiduciary under this section.

(c) *PAYMENT OF CERTAIN EXPENSES.*—Authority is hereby granted for the payment of any court or other expenses incident to any investigation or court proceeding for the appointment of any fiduciary or other person for the purpose of payment of benefits payable under laws administered by the Secretary or the removal of such fiduciary and appointment of another, and of expenses in connection with the administration of such benefits by such fiduciaries, or in connection with any other court proceeding hereby authorized, when such payment is authorized by the Secretary.

(d) *TEMPORARY PAYMENT OF BENEFITS.*—All or any part of any benefits the payment of which is suspended or withheld under this section may, in the discretion of the Secretary, be paid temporarily to the person having custody and control of the incompetent or minor beneficiary, to be used solely for the benefit of such beneficiary, or, in the case of an incompetent veteran, may be apportioned to the dependent or dependents, if any, of such veteran. Any part not so paid and any funds of a mentally incompetent or insane veteran not paid to the chief officer of the institution in which such veteran is a patient nor apportioned to the veteran's dependent or dependents may be ordered held in the Treasury to the credit of such beneficiary. All funds so held shall be disbursed under the order and in the discretion of the Secretary for the benefit of such



beneficiary or the beneficiary's dependents. Any balance remaining in such fund to the credit of any beneficiary may be paid to the beneficiary if the beneficiary recovers and is found competent, or if a minor, attains majority, or otherwise to the beneficiary's fiduciary, or, in the event of the beneficiary's death, to the beneficiary's personal representative, except as otherwise provided by law; however, payment will not be made to the beneficiary's personal representative if, under the law of the beneficiary's last legal residence, the beneficiary's estate would escheat to the State. In the event of the death of a mentally incompetent or insane veteran, all gratuitous benefits under laws administered by the Secretary deposited before or after August 7, 1959, in the personal funds of patients trust fund on account of such veteran shall not be paid to the personal representative of such veteran, but shall be paid to the following persons living at the time of settlement, and in the order named: The surviving spouse, the children (without regard to age or marital status) in equal parts, and the dependent parents of such veteran, in equal parts. If any balance remains, such balance shall be deposited to the credit of the applicable current appropriation; except that there may be paid only so much of such balance as may be necessary to reimburse a person (other than a political subdivision of the United States) who bore the expenses of last sickness or burial of the veteran for such expenses. No payment shall be made under the two preceding sentences of this subsection unless claim therefor is filed with the Secretary within five years after the death of the veteran, except that, if any person so entitled under said two sentences is under legal disability at the time of death of the veteran, such five-year period of limitation shall run from the termination or removal of the legal disability.

(e) **ESCHEATMENT.**—Any funds in the hands of a fiduciary appointed by a State court or the Secretary derived from benefits payable under laws administered by the Secretary, which under the law of the State wherein the beneficiary had last legal residence would escheat to the State, shall escheat to the United States and shall be returned by such fiduciary, or by the personal representative of the deceased beneficiary, less legal expenses of any administration necessary to determine that an escheat is in order, to the Department, and shall be deposited to the credit of the applicable revolving fund, trust fund, or appropriation.

\* \* \* \* \*

#### **§ 5506. Definition of “fiduciary”**

**[For purposes]** (a) *For purposes* of this chapter and chapter 61 of this title, the term “fiduciary” means—

(1) \* \* \*

\* \* \* \* \*

(b)(1) *For purposes of subsection (a), the term “person” includes any—*

(A) *State or local government agency whose mission is to carry out income maintenance, social service, or health care-related activities;*

(B) *any State or local government agency with fiduciary responsibilities; or*

(C) any nonprofit social service agency that the Secretary determines—

- (i) regularly provides services as a fiduciary concurrently to five or more individuals; and
- (ii) is not a creditor of any such individual.

(2) The Secretary shall maintain a list of State or local agencies and nonprofit social service agencies under paragraph (1) that are qualified to act as a fiduciary under this chapter. In maintaining such list, the Secretary may consult the lists maintained under section 807(h) of the Social Security Act (42 U.S.C. 1007(h)).

**§ 5507. Inquiry, investigations, and qualification of fiduciaries**

[(a) Any certification of a person for payment of benefits of a beneficiary to that person as such beneficiary's fiduciary under section 5502 of this title shall be made on the basis of—

[(1) an inquiry or investigation by the Secretary of the fitness of that person to serve as fiduciary for that beneficiary, such inquiry or investigation—

[(A) to be conducted in advance of such certification;

[(B) to the extent practicable, to include a face-to-face interview with such person; and

[(C) to the extent practicable, to include a copy of a credit report for such person issued within one year of the date of the proposed appointment;

[(2) adequate evidence that certification of that person as fiduciary for that beneficiary is in the interest of such beneficiary (as determined by the Secretary under regulations); and

[(3) the furnishing of any bond that may be required by the Secretary.

[(b) As part of any inquiry or investigation of any person under subsection (a), the Secretary shall request information concerning whether that person has been convicted of any offense under Federal or State law which resulted in imprisonment for more than one year. If that person has been convicted of such an offense, the Secretary may certify the person as a fiduciary only if the Secretary finds that the person is an appropriate person to act as fiduciary for the beneficiary concerned under the circumstances.

[(c)(1) In the case of a proposed fiduciary described in paragraph (2), the Secretary, in conducting an inquiry or investigation under subsection (a)(1), may carry out such inquiry or investigation on an expedited basis that may include waiver of any specific requirement relating to such inquiry or investigation, including the otherwise applicable provisions of subparagraphs (A), (B), and (C) of such subsection. Any such inquiry or investigation carried out on such an expedited basis shall be carried out under regulations prescribed for purposes of this section.

[(2) Paragraph (1) applies with respect to a proposed fiduciary who is—

[(A) the parent (natural, adopted, or stepparent) of a beneficiary who is a minor;

[(B) the spouse or parent of an incompetent beneficiary;

[(C) a person who has been appointed a fiduciary of the beneficiary by a court of competent jurisdiction; or

[(D) being appointed to manage an estate where the annual amount of veterans benefits to be managed by the proposed fiduciary does not exceed \$3,600, as adjusted pursuant to section 5312 of this title.

[(d) TEMPORARY FIDUCIARIES.—When in the opinion of the Secretary, a temporary fiduciary is needed in order to protect the assets of the beneficiary while a determination of incompetency is being made or appealed or a fiduciary is appealing a determination of misuse, the Secretary may appoint one or more temporary fiduciaries for a period not to exceed 120 days. If a final decision has not been made within 120 days, the Secretary may not continue the appointment of the fiduciary without obtaining a court order for appointment of a guardian, conservator, or other fiduciary under the authority provided in section 5502(b) of this title.]

**§5507. Inquiry, investigations, and qualification of fiduciaries**

(a) INVESTIGATION.—Any certification of a person for payment of benefits of a beneficiary to that person as such beneficiary's fiduciary under section 5502 of this title shall be made on the basis of—

(1) an inquiry or investigation by the Secretary of the fitness of that person to serve as fiduciary for that beneficiary to be conducted in advance of such certification and in accordance with subsection (b);

(2) adequate evidence that certification of that person as fiduciary for that beneficiary is in the interest of such beneficiary (as determined by the Secretary under regulations);

(3) adequate evidence that the person to serve as fiduciary protects the private information of a beneficiary in accordance with subsection (d)(1); and

(4) the furnishing of any bond that may be required by the Secretary, in accordance with subsection (f).

(b) ELEMENTS OF INVESTIGATION.—(1) In conducting an inquiry or investigation of a proposed fiduciary under subsection (a)(1), the Secretary shall conduct—

(A) a face-to-face interview with the proposed fiduciary by not later than 30 days after the date on which such inquiry or investigation begins; and

(B) a background check of the proposed fiduciary to—

(i) in accordance with paragraph (2), determine whether the proposed fiduciary has been convicted of a crime; and

(ii) determine whether the proposed fiduciary will serve the best interest of the beneficiary, including by conducting a credit check of the proposed fiduciary and checking the records under paragraph (5).

(2) The Secretary shall request information concerning whether that person has been convicted of any offense under Federal or State law. If that person has been convicted of such an offense, the Secretary may certify the person as a fiduciary only if the Secretary finds that the person is an appropriate person to act as fiduciary for the beneficiary concerned under the circumstances.

(3) The Secretary shall conduct the background check described in paragraph (1)(B)—

- (A) each time a person is proposed to be a fiduciary, regardless of whether the person is serving or has served as a fiduciary; and
- (B) at no expense to the beneficiary.
- (4) Each proposed fiduciary shall disclose to the Secretary the number of beneficiaries that the fiduciary acts on behalf of.
- (5) The Secretary shall maintain records of any person who has—
  - (A) previously served as a fiduciary; and
  - (B) had such fiduciary status revoked by the Secretary.
- (6)(A) If a fiduciary appointed by the Secretary is convicted of a crime described in subparagraph (B), the Secretary shall notify the beneficiary of such conviction by not later than 14 days after the date on which the Secretary learns of such conviction.
- (B) A crime described in this subparagraph is a crime—
  - (i) for which the fiduciary is convicted while serving as a fiduciary for any person;
  - (ii) that is not included in a report submitted by the fiduciary under section 5509(a) of this title; and
  - (iii) that the Secretary determines could affect the ability of the fiduciary to act on behalf of the beneficiary.
- (c) INVESTIGATION OF CERTAIN PERSONS.—(1) In the case of a proposed fiduciary described in paragraph (2), the Secretary, in conducting an inquiry or investigation under subsection (a)(1), may carry out such inquiry or investigation on an expedited basis that may include giving priority to conducting such inquiry or investigation. Any such inquiry or investigation carried out on such an expedited basis shall be carried out under regulations prescribed for purposes of this section.
- (2) Paragraph (1) applies with respect to a proposed fiduciary who is—
  - (A) the parent (natural, adopted, or stepparent) of a beneficiary who is a minor;
  - (B) the spouse or parent of an incompetent beneficiary;
  - (C) a person who has been appointed a fiduciary of the beneficiary by a court of competent jurisdiction;
  - (D) being appointed to manage an estate where the annual amount of veterans benefits to be managed by the proposed fiduciary does not exceed \$3,600, as adjusted pursuant to section 5312 of this title; or
  - (E) a person who is authorized to act on behalf of the beneficiary under a durable power of attorney.
- (d) PROTECTION OF PRIVATE INFORMATION.—(1) A fiduciary shall take all reasonable precautions to—
  - (A) protect the private information of a beneficiary, including personally identifiable information; and
  - (B) securely conducts financial transactions.
- (2) A fiduciary shall notify the Secretary of any action of the fiduciary that compromises or potentially compromises the private information of a beneficiary.
- (e) POTENTIAL MISUSE OF FUNDS.—(1) If the Secretary has reason to believe that a fiduciary may be misusing all or part of the benefit of a beneficiary, the Secretary shall—
  - (A) conduct a thorough investigation to determine the veracity of such belief; and

- (B) if such veracity is established, transmit to the officials described in paragraph (2) a report of such investigation.
- (2) The officials described in this paragraph are the following:
- (A) The Attorney General.
- (B) Each head of a Federal department or agency that pays to a fiduciary or other person benefits under any law administered by such department or agency for the use and benefit of a minor, incompetent, or other beneficiary.
- (f) BOND.—In requiring the furnishing of a bond under subsection (a)(4), the Secretary shall—
- (1) ensure that any such bond is not paid using any funds of the beneficiary; and
- (2) consider—
- (A) the care a proposed fiduciary has taken to protect the interests of the beneficiary; and
- (B) the capacity of the proposed fiduciary to meet the financial requirements of the bond without sustaining hardship.
- (g) LIST OF FIDUCIARIES.—Each regional office of the Veterans Benefits Administration shall maintain a list of the following:
- (1) The name and contact information of each fiduciary, including address, telephone number, and email address.
- (2) With respect to each fiduciary described in paragraph (1)—
- (A) the date of the most recent background check and credit check performed by the Secretary under this section;
- (B) the date that any bond was paid under this section;
- (C) the name, address, and telephone number of each beneficiary the fiduciary acts on behalf of; and
- (D) the amount that the fiduciary controls with respect to each beneficiary described in subparagraph (C).

\* \* \* \* \*

**§ 5509. [Authority to require fiduciary to receive payments at regional offices of the Department when failing to provide required accounting] Annual reports and accountings of fiduciaries**

(a) REQUIRED REPORTS AND ACCOUNTINGS.—The Secretary [may require a fiduciary to file a], subject to regulations prescribed pursuant to subsection (f), shall require a fiduciary to file an annual report or accounting pursuant to regulations prescribed by the Secretary. The Secretary shall transmit such annual report or accounting to the beneficiary and any legal guardian of such beneficiary.

\* \* \* \* \*

(c) MATTERS INCLUDED.—An annual report or accounting under subsection (a) shall include the following:

- (1) For each beneficiary that a fiduciary acts on behalf of—
- (A) the amount of the benefits of the beneficiary accrued during the year, the amount spent, and the amount remaining; and
- (B) if the fiduciary serves the beneficiary with respect to benefits not administered by the Secretary, an accounting of all sources of benefits or other income the fiduciary oversees for the beneficiary.

(2) *A list of events that occurred during the year covered by the report that could affect the ability of the fiduciary to act on behalf of the beneficiary, including—*

*(A) the fiduciary being convicted of any crime;*

*(B) the fiduciary declaring bankruptcy; and*

*(C) any judgments entered against the fiduciary.*

(d) *RANDOM AUDITS.—The Secretary shall annually conduct random audits of fiduciaries who receive a commission pursuant to subsection 5502A(a)(1) of this title.*

(e) *STATUS OF FIDUCIARY.—If a fiduciary includes in the annual report events described in subsection (c)(2), the Secretary may take appropriate action to adjust the status of the fiduciary as the Secretary determines appropriate, including by revoking the fiduciary status of the fiduciary.*

(f) *REGULATIONS.—(1) In prescribing regulations to carry out this section, the Secretary, in consultation with the Under Secretary for Benefits and the Under Secretary for Health, shall ensure that the care provided by a fiduciary described in paragraph (2) to a beneficiary is not diminished or otherwise worsened by the fiduciary complying with this section.*

*(2) A fiduciary described in this paragraph is a fiduciary who, in addition to acting as a fiduciary for a beneficiary, provides care to the beneficiary pursuant to this title (including such care provided under section 1720G of this title).*

#### **§ 5510. Annual report**

**【The Secretary shall include in the Annual Benefits Report of the Veterans Benefits Administration or the Secretary's Annual Performance and Accountability Report】** *Not later than July 1 of each year, the Secretary shall submit to the Committees on Veterans' Affairs of the House of Representatives and the Senate a separate report containing information concerning fiduciaries who have been appointed to receive payments for beneficiaries of the Department. As part of such information, the Secretary shall separately set forth the following:*

(1) \* \* \*

\* \* \* \* \*

### **CHAPTER 57—RECORDS AND INVESTIGATIONS**

#### **SUBCHAPTER I—RECORDS**

Sec.

5701. Confidential nature of claims.

\* \* \* \* \*

#### **SUBCHAPTER III—INFORMATION SECURITY**

\* \* \* \* \*

5724A. *Data breach notification.*

\* \* \* \* \*

#### **SUBCHAPTER III—INFORMATION SECURITY**

\* \* \* \* \*

**§5724A. Data breach notification**

(a) **NOTIFICATION REQUIREMENT.**—Except as provided in subsection (d), in the event of a data breach with respect to sensitive personal information that is processed or maintained by the Secretary, by not later than 10 business days after the date on which the Secretary learns of the data breach, the Secretary shall notify the appropriate committees of Congress and each individual whose sensitive personal information is involved in the data breach is notified of the data breach. If the Secretary determines that providing such notification within 10 business days is not feasible due to circumstances necessary to accurately identify the individuals whose sensitive personal information is involved in the data breach or to prevent further breach or unauthorized disclosure and reasonably restore the integrity of the data system the Secretary shall provide such notification not later than 15 business days after the date on which the Secretary learns of the data breach.

(b) **CONTRACTS FOR DATA PROCESSING OR MAINTENANCE.**—If the Secretary enters into a contract for the performance of any Department function that requires access to sensitive personal information, the Secretary shall require as a condition of the contract that the contractor agree to provide notification of data breaches in the same manner as required of the Secretary under subsection (a).

(c) **METHOD AND CONTENT OF NOTIFICATION.**—(1) Notification provided to an individual under subsection (a) shall be provided clearly and conspicuously by one of the following methods:

(A) Written notification.

(B) Notification by email or other electronic means, if the Secretary's primary method of communication with the individual is by email or such other electronic means.

(2) Regardless of the method by which notification is provided to an individual under paragraph (1), such notification shall include—

(A) a description of the sensitive personal information involved in the data breach;

(B) a telephone number that the individual may use, at no cost to the individual, to contact an appropriate employee of the Department to inquire about the data breach or the individual's sensitive personal information maintained by the Department;

(C) notice that the individual is entitled to receive, at no cost to such individual, credit protection services under section 5724 of this title;

(D) the toll-free contact telephone numbers and addresses for the major credit reporting agencies; and

(E) a toll-free telephone number and website address whereby the individual may obtain information regarding identity theft.

(d) **NOTIFICATION OF GENERAL PUBLIC.**—The Secretary, acting through the Office of Public Affairs of the Department, shall notify the general public concerning any data breach involving sensitive personal information by not later than 10 business days after the date on which the Secretary learns of the data breach, unless the Secretary determines that to do so is not feasible due to circumstances necessary to accurately identify the individuals whose sensitive personal information is involved in the data breach or to prevent further breach or unauthorized disclosure and reasonably

restore the integrity of the data system, such notification shall be made as soon as possible.

(e) *APPROPRIATE COMMITTEES OF CONGRESS.*—In this section, the term “appropriate committees of Congress” means the Committee on Veterans Affairs’ of the House of Representatives and the Committee on Veterans’ Affairs of the Senate.

\* \* \* \* \*

## CHAPTER 59—AGENTS AND ATTORNEYS

Sec.

5901. Prohibition against acting as claims agent or attorney.

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5906. Provision of access to case-tracking information.

\* \* \* \* \*

### **§ 5906. Provision of access to case-tracking information**

(a) *IN GENERAL.*—(1) In accordance with subsection (b), the Secretary shall provide a covered employee with access to the case-tracking system to provide a veteran with information regarding the status of a claim submitted by such veteran, regardless of whether such employee is acting under a power of attorney executed by such veteran.

(2) In providing a covered employee with access to the case-tracking system under paragraph (1), the Secretary shall ensure—

(A) that such access—

(i) is provided in a manner that does not allow such employee to modify the data contained in such system; and

(ii) does not include access to medical records; and

(B) that each time a covered employee accesses such system, the employee must certify that such access is for official purposes only.

(b) *PRIVACY CERTIFICATION COURSE.*—The Secretary may not provide a covered employee with access to the case-tracking system under subsection (a)(1) unless the covered employee has successfully completed a certification course on privacy issues provided by the Secretary.

(c) *TREATMENT OF DISCLOSURE.*—The access to information by a covered employee pursuant to subsection (a)(1) shall be deemed to be—

(1) a covered disclosure under section 552a(b) of title 5; and

(2) a permitted disclosure under regulations promulgated under section 264(c) of the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. 1320d–2 note).

(d) *DEFINITIONS.*—In this section:

(1) The term “case-tracking system” means the system of the Department of Veterans Affairs that provides information regarding the status of a claim submitted by a veteran.

(2) The term “covered employee” means—

(A) an employee of a Member of Congress who assists the constituents of the Member with issues regarding departments or agencies of the Federal Government; or

(B) an employee of a State or local governmental agency (including a veterans service officer) who, in the course of carrying out the responsibilities of such employment, assists



*veterans with claims for any benefit under the laws administered by the Secretary.*

\* \* \* \* \*

## CHAPTER 61—PENAL AND FORFEITURE PROVISIONS

\* \* \* \* \*

### § 6107. Reissuance of benefits

(a) NEGLIGENT FAILURE BY SECRETARY.—(1) \* \* \*

(2) There shall be considered to have been a negligent failure by the Secretary to investigate and monitor a fiduciary in the following cases:

(A) \* \* \*

\* \* \* \* \*

(C) In any other case in which actual negligence is shown, *including by the Secretary not acting in accordance with section 5507 of this title.*

\* \* \* \* \*

## VETERANS BENEFITS ACT OF 2003

\* \* \* \* \*

## TITLE VII—OTHER MATTERS

\* \* \* \* \*

### SEC. 704. TEMPORARY AUTHORITY FOR PERFORMANCE OF MEDICAL DISABILITIES EXAMINATIONS BY CONTRACT PHYSICIANS.

(a) \* \* \*

\* \* \* \* \*

(c) EXPIRATION.—The authority in subsection (a) shall expire on **[December 31, 2012]** *December 31, 2017*. No examination may be carried out under the authority provided in that subsection after that date.

\* \* \* \* \*